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COMMISSION ON HUMAN RIGHTS

Forty-eighth session

SUMMARY RECORD OF THE 33rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 19 February 1992, at 10 a.m.

Chairman: Mr. SOLT (Hungary)

later: Mr. ENNACEUR (Tunisia)

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The meeting was called to order at 10.25 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES, INCLUDING:

(a) QUESTION OF HUMAN RIGHTS IN CYPRUS

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(agenda item 12) (E/CN.4/1992/3, 4, 25, 26, 27 and Corr.1, 28 and Add.1, 29, 30, 32, 34-37, 60, 64 and 67; E/CN.4/1992/NGO/2, 5, 10, 13, 19 and 24; E/CN.4/1991/24, 27-31, 33 and Add.1, and 34-36; A/46/446, 529, 542, 544 and Corr.1, 606 and 647)

1. The CHAIRMAN said that the Commission had considered agenda item 12 (c) in closed meetings. In accordance with Economic and Social Council resolution 1503 (XLVIII), it had examined the human rights situations in Bahrain, Chad, Somalia, Sudan, the Syrian Arab Republic and Zaire and had decided to defer consideration of the human rights situation in Myanmar to a later date. It had decided to end its consideration under the confidential procedure of the human rights situation in the Syrian Arab Republic.

2. In conformity with paragraph 8 of Economic and Social Council resolution 1503 (XLVIII), members of the Commission should not refer in public meetings to the confidential decisions which had been taken or to related confidential documentation.

3. Mr. MARTENSON (Under-Secretary-General for Human Rights), introducing subitems (a) and (b) of agenda item 12, said that, under that item, the Commission traditionally carried out a global evaluation of the question of the violation of human rights and fundamental freedoms. That was an essential element of its work which complemented the debates on action to promote greater respect for human rights.

4. Over the years, the Commission had gradually developed a set of mechanisms to monitor respect for human rights and to investigate allegations concerning abuses of the rights enshrined in the Universal Declaration of Human Rights. Special procedures that were sufficiently flexible to adapt to each particular situation had been established to complement in a concrete and effective way the actions of the various human rights treaty bodies. In addition, special representatives or rapporteurs had been appointed by the Commission to report on the situation in particular countries or on particular themes. The Commission thus had before it a number of reports regarding country situations which had been prepared by special rapporteurs or special representatives.

5. In the course of preparing his report (E/CN.4/1991/33), the Commission's Special Rapporteur on the situation of human rights in Afghanistan, had visited Pakistan and Afghanistan on two occasions and had held talks with high officials in Islamabad and Kabul. He had also visited prisons, hospitals and refugee camps, met representatives of various organizations and private persons, and travelled to areas controlled by opposition forces.

6. At its previous session, the Commission had requested the Secretary-General to appoint a special representative to maintain direct contact with the Government and citizens of Cuba on issues and questions contained in the report of the mission which had taken place to that country. The report of the Special Representative (E/CN.4/1991/27) was before the Commission.

7. The report of the Commission's Special Representative on the situation of human rights in El Salvador (E/CN.4/1991/34) was also before the Commission. The Special Representative had visited El Salvador from 21 to 29 September 1991, where he had had interviews with leading authorities, including the President of the Republic, the President of the Supreme Court and several ministers. He had also interviewed numerous witnesses and received extensive information from non-governmental organizations and from peasant and trade-union movements. In addition, he had visited prisons and interviewed representatives of the FMLN outside the country. The Special Representative had also held a coordination meeting with the Director of the Human Rights Division of the United Nations El Salvador Verification Mission (ONUSAL).

8. The Special Rapporteur on the situation of human rights in Iraq, who had been appointed by the Commission at its forty-seventh session, had exchanged correspondence with the Government of Iraq concerning a wide variety of issues relating to human rights in that country. He had presented the results of those written exchanges to the forty-sixth session of the General Assembly in an interim report (A/46/647). In January 1992, the Special Rapporteur had visited Iraq and had met several ministers of Government to discuss allegations of violations that had come to his attention. While there, he had surveyed conditions in the south and the north of the country and had met the Grand Ayatollah Al-Khoie in Najaf and Kurdish leaders in the north. Testimony had also been received from individuals and representatives of non-governmental organizations, including newly formed human rights organizations in Kurdish areas. Before leaving Iraq, the Special Rapporteur had visited the Abu Ghraib prison complex, where he had spoken to prison administrators and several prisoners. In addition, he had visited four refugee camps in the Islamic Republic of Iran and two such camps in the Kingdom of Saudi Arabia.

9. The report of the Special Representative of the Commission on the situation of human rights in the Islamic Republic of Iran (E/CN.4/1991/34 and Add.1) contained information on his visit to the Islamic Republic of Iran in 1991 during which he had met leading personalities of the Government and had visited the prisons of Evin and Gohardasht. He had also interviewed witnesses and private individuals and had held meetings with non-governmental organizations and with representatives of the United Nations High Commissioner for Refugees in Tehran.

10. In its debate on the current item, the Commission also had before it the report of its Special Rapporteur on the situation of human rights in occupied Kuwait (E/CN.4/1992/26). That report marked the first time that the Commission had created a mandate to examine human rights questions during a period of international armed conflict in which the territory of a State had been invaded and occupied. The Special Rapporteur had undertaken two visits

to Kuwait in June and September 1991 during which he had met senior government authorities and had interviewed persons concerning violations of human rights committed by Iraqi occupying forces.

11. The Commission's Special Rapporteur on the situation of human rights in Romania had visited that country in November 1991 and had met several high government officials and leaders of political parties and groups, members of the clergy, representatives of non-governmental organizations and representatives of all segments of society. In addition to Bucharest, he had visited Timisoara and the district of Suceava. During his visits to police stations and prisons, he had been able to speak privately to a number of detainees.

12. One of the main thematic mandates created by the Commission concerned summary or arbitary executions. The report of the Special Rapporteur on summary or arbitary executions (E/CN.4/1992/30 and Add.1) reflected the ever-growing number of communications received and reviewed during the 10 years of his mandate. In his review, the Special Rapporteur outlined the scope and evolution of his mandate, the number and type of cases reported to him and the working methods that had been developed over the decade. In an addendum to his main report, the Special Rapporteur gave an account of his visit to Zaire in May 1991.

13. In his note on alleged reprisals against witnesses or victims of human rights violations (E/CN.4/1992/29), submitted pursuant to a request by the Commission, the Secretary-General included a summary of the information received from various individuals and non-governmental organizations on intimidation or reprisals against persons or organizations that cooperated with the United Nations human rights bodies or tried to avail themselves of the Organization's mechanisms or procedures. The note also included a description of the action taken by such bodies in compliance with the request made to them by the Commission and contained, further, the replies received from Governments concerning cases transmitted to them.

14. In addition to those reports, the Commission had before it reports and documents dealing with the question of human rights in Cyprus, Albania, southern Lebanon, and Tibet.

15. The information in the reports of the special rapporteurs and those prepared by the Secretary-General, taken together with the information supplied by governmental and non-governmental organizations, presented a unique global view of human rights problems. In view of its ample experience in that domain, the Commission should therefore consider how it could make better use of such information to help put an end to violations and prevent new situations of violations from developing. He was confident that the meeting of the Bureau, that was to be held after the session of the Commission, would, when considering proposals for streamlining the Commission's agenda, also consider ways in which United Nations bodies might act in a more coherent manner to prevent or end violations.

16. For many millions of people throughout the world, the debate that was about to begin was a crucial opportunity to protect their lives and physical

integrity. Members of the Commission should therefore always keep in mind the victims and remember that the establishment of a new system of international relations should begin with effective responses to their appeals.

17. Mr. Ennaceur (Tunisia), took the Chair.

18. The CHAIRMAN invited the Commission's Special Rapporteur on summary or arbitrary executions to introduce his report.

19. Mr. WAKO (Special Rapporteur on summary or arbitrary executions), introducing his tenth report (E/CN.4/1992/30), said that summary or arbitrary executions occurred in nearly all parts of the world and affected all classes of people, without exception. A factor common to such executions was the opposition, or perceived opposition, of the victims to those who wielded political or economic power in the State on Government, or to certain aspects of their political and economic policies.

20. In his first report to the Commission, he had recommended that the international community should launch a worldwide educational campaign to mobilize world opinion against summary or arbitrary executions. The campaign should be aimed at all segments of society, but particularly the police, the military, the judiciary and the executive and legislative branches. Those recommendations were still valid in 1992.

21. The phenomenon of summary or arbitrary executions was most prevalent in areas affected by internal disturbances and political tensions or where there were gross violations of other human rights. Indeed, the violation of other human rights was a warning signal that summary or arbitrary executions - the violation of the most basic of all rights, the right to life - were going to occur if the situations were not remedied in time. The enhancement of the democratic system, the strengthening of the rule of law, a greater understanding and respect for the right to life, particularly among law enforcement agencies and those who used weapons in their activities, would go far towards eliminating the phenomenon of arbitrary or summary execution.

22. There was also an urgent need to deal with the underlying causes which led to tension in any society. Such causes included ethnic or religious strife, conflicts arising out of unjust economic and social systems, and conflicts resulting from the tyranny of the majority over the minority. Those causes could be most effectively and peacefully addressed in an environment that resulted from a more just national and international economic and social system.

23. His mandate had helped to focus the attention of the international community on the phenomenon of summary or arbitrary executions. Between 1984 and 1992, the number of Governments to which letters containing allegations had been sent had increased from 10 to 49, while the number of countries to which urgent appeals had been sent had grown from 9 to 44. The number of Governments that had responded had also increased. Since completing his 1992 report, he had received replies from the Governments of Bhutan, Brazil, Cuba, El Salvador, Myanmar, Nicaragua, Trinidad and Tobago, Venezuela and Yugoslavia. At the same time, however, the number and type of cases reported had continued to increase, particularly over the previous two years.

24. In reviewing the first decade of his activities, he wished to stress the importance of missions to countries, which permitted an in-situ examination of a situation. Missions constituted the most effective method available to the Special Rapporteur for evaluating the veracity of allegations received and for arriving at a proper understanding of the social, legal, political and economic context in which executions occurred in any given country. He had thus been encouraged by the invitations received from the Governments of Colombia, Peru, Sri Lanka, Suriname, Uganda, and Zaire to visit those countries.

25. In 1991, he had undertaken a mission to Zaire. One of the more important points raised in his report on that mission (E/CN.4/1992/30/Add.1) was the need to establish and maintain a dialogue between the Commission's Special Rapporteur and the Government of Zaire on those issues which touched upon the inherent right to life of every human being and the obligation of the Government to ensure that that right was accorded full protection. It was his belief that the Government of Zaire would continue to remain open to such a discussion and that the results would be reflected in the report of the Special Rapporteur to the next session of the Commission.

26. He had worked closely with the Ad Hoc Working Group of Experts on southern Africa, the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs and the Committee on Crime Prevention and Control on the elaboration of the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, adopted by the Economic and Social Council in its resolution 1989/65, and with the office of the Secretary-General, especially when he had been asked to provide good offices. Similarly, he had used the general comments of the Human Rights Committee as a guide to the interpretation of international standards concerning summary and arbitrary executions. He had also attempted to support the work of the United Nations High Commissioner for Refugees and the International Committee of the Red Cross.

27. He drew the Commission's attention to the recommendations in the report that he had addressed specifically to Governments, the international community and the Centre for Human Rights. He expressed his appreciation to the Centre's staff, without whose dedication it would have been impossible to compile the various reports. His own rapidly growing mandate and the increase in other work had stretched staff resources to the limit, and he appealed to the United Nations to increase both the material and the human resources of the Centre.

28. In view of his appointment in May 1991 as Attorney-General of the Republic of Kenya, he would not be able to continue effectively to discharge his duties as Special Rapporteur and he therefore intended to resign his post at the end of the Commission's current session. He would continue to support the work of the United Nations in the field of human rights wherever he could. Human rights work could and must be carried out whether a person was in government, in an intergovernmental organization, or in a non-governmental organization or just a private citizen.

29. THE CHAIRMAN, speaking on behalf of the Commission, paid tribute to Mr. Wako's dedicated work as Special Rapporteur on summary or arbitrary executions.

30. Mr. Solt (Hungary) resumed the Chair.

STATEMENT BY THE MINISTER FOR FOREIGN AFFAIRS OF COSTA RICA

31. The CHAIRMAN welcomed the Minister for Foreign Affairs of Costa Rica and invited him to address the Commission.

32. Mr. NIEHAUS (Costa Rica) said that respect for human life, justice, security and liberty for all was a prerequisite for international peace. The international community must continue along the path towards a universalization of human rights, without which there could be no new world order.

33. In the view of the Governments of Central America, the Esquipulas process had enabled real progress to be made in the search for peace and democracy in that part of the world. Within the framework of the agreements, the Governments had reaffirmed the decision to work towards lasting peace in Central America by consolidating the rule of law, strengthening democratic institutions and respect for human rights and reconciling the various segments of society through an open and constructive dialogue. Most recently, the presidents of the countries of the region had met at Tegucigalpa, Honduras, to give fresh impetus to the system of regional integration. His Government was convinced that the international community would support those efforts and help the peoples of Central America in their quest for liberty and democracy.

34. The last few weeks had seen some historic events in Central America. The peace agreement signed in El Salvador between the democratic Government of President Cristiani and the Frente Farabundo Martí para la Liberación Nacional had put an end to a bloody armed conflict that had cost more than 70,000 lives. His own Government congratulated President Cristiani on his policy of dialogue and his search for a political solution to the conflict. It urged the international community, particularly those countries that had worked to make the Chapultepec peace agreement possible, to provide unconditional support to the Government of El Salvador in its efforts to achieve peace, respect for all human rights and the economic and social reconstruction of the country.

35. His Government also supported the peace plan of President Serrano of Guatemala. Despite the enormous difficulties facing the people of that country, the current democratic Government was making great efforts to bring about a reconciliation of Guatemalan society through the peaceful reintegration of the irregular forces into civil and political life. More than ever before, the Government of Guatemala needed the advisory services of the Centre for Human Rights and the support of the international community in general if it was to continue making progress towards democracy and respect for human rights.

36. Turning to the situation in Haiti, his Government reaffirmed the opinion it had expressed in the Organization of American States: to achieve peace and respect for human rights in that nation, it was essential to restore the civilian Government elected by the people of Haiti in free elections. Given the deterioration in the political, social and economic conditions of that country, the Commission on Human Rights must take forceful measures to help restore democracy and respect for human rights there. In that connection, Costa Rica energetically condemned the politically motivated shootings of civilians. Although the principles of non-intervention and the self-determination of peoples were the basic pillars of international law and peaceful coexistence among States, respect for human rights transcended domestic jurisdiction and constituted an international obligation with legal and political effect for all States.

37. Apart from Haiti and Cuba, democracy prevailed throughout Latin America, but some of the new democratic systems were very fragile and were facing serious economic and social problems. In some Latin American societies, the forces of darkness were still at work, as could be seen from the recent attempt to do away with the democratic Government of Venezuela, an act which had been categorically condemned by the Organization of American States. The forces of democracy must remain vigilant. Respect for human rights was the obligation not only of States, but also of each and every individual.

38. The question of environmental protection was closely linked to the issue of human rights. The right to live in a safe environment, which had taken on increased importance since the Stockholm Declaration, must be included in the standard-setting and institutional structures for human rights protection at the regional and international levels. Although the subject still required considerable development, the existing framework offered sufficiently broad possibilities for ensuring respect for that right. Human rights bodies must give priority to the right to a safe environment in all its aspects.

39. Environmental protection was closely linked to development. For his Government, which had underscored the need to establish a new environmental world order, environmental protection and development must be reconciled if the human species was to survive. His Government had proposed the creation of a council for the Earth, with headquarters in Costa Rica, to follow up the activities of the international community aimed at protecting that basic right. It was to be hoped that the initiative would receive broad support when it was formally submitted to the United Nations Conference on Environment and Development.

40. Turning to the question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which his Government had propsoed to the Commission in 1980, he said that the idea behind such an instrument was that, since torture was practised in secrecy, the best way to combat it was to obtain access to all places of detention so as to verify whether such abuses were taking place. The International Committee of the Red Cross had a system for monitoring the treatment of prisoners of war that had proved very effective in preventing torture, and it had seemed reasonable to create a similar procedure for visiting all persons deprived of their liberty. For a system of visits to

places of detention by an independent international body to be acceptable to Governments, it must be based on a principle of cooperation with States, and it must be confidential.

41. Notwithstanding the existence of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe and the Convention against Torture itself, an optional protocol would not be redundant, as was borne out by the report of the Special Rapporteur on questions relevant to torture (E/CN.4/1991/17). Article 20 of the Convention against Torture did indeed provide for a system of visits, but only when reliable information was received which appeared to contain well-founded indications that torture was being systematically practised. Thus, the Convention allowed for visits after the fact which, though indispensable, was not effective. The draft optional protocol was designed to play a preventive role, in that visits could be made even if there was no suspicion that torture was taking place.

42. Although the prior existence of the European Convention might pose problems, at the same time it showed that a system of visits could work at regional level before being introduced universally. Commission decision 1989/104, in which it was decided to defer until its forty-seventh session consideration of the draft optional protocol, had also provided for the drafting of other regional systems outside the United Nations, but unfortunately it had not been possible to date to produce similar draft instruments for other regions. In any event, the draft optional protocol envisaged the possibility of a universal system of visits coexisting with regional procedures.

43. The draft optional protocol also called for the creation of a sub-committee for the prevention of torture and other inhuman and degrading treatment or punishment. Once 10 member States had ratified the draft optional protocol, the Committee against Torture would establish the sub-committee and elect its members. The purpose of the new body would not be to denounce States but to attempt to strengthen the protection of individuals deprived of their liberty.

44. The sub-committee would not have judicial functions and would not have to decide whether international instruments prohibiting torture had been violated. Its task would be purely preventive and would consist in conducting missions of investigation and, where necessary, formulating recommendations. It would establish a dialogue between the State authorities and the monitoring body based on confidentiality and cooperation. Unlike other international treaty bodies, it would take action before torture or abuse occurred. It was to be hoped that the member States of the Commission and the non-governmental organizations would help to improve the text of the protocol, so that it could be considered by the Commission at its forty-ninth session.

45. Mr. Ennaceur (Tunisia) resumed the Chair.

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION:

(a) ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

(b) NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

(c) COORDINATING ROLE OF THE CENTRE FOR HUMAN RIGHTS WITHIN THE UNITED NATIONS BODIES AND MACHINERY DEALING WITH THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

(agenda item 11) (continued) (E/CN.4/1992/21 and Add.1, 22-24, 43 and Add.1 and 2, 58 and 73; E/CN.4/1991/NGO/1 and 21)

46. Mr. ROA KOURI (Cuba) said that the principal aspects of the "new world order" with regard to human rights were becoming increasingly clear. An attempt was being made to authorize the Security Council, on the pretext of an as yet undefined instability in the field of human rights in any country, to treat such a situation as a threat to international peace and security and thus capable of giving rise to action, including coercive action, by that organ. In that way, the balance of functions established by the Charter among three of the principal organs of the United Nations would be destroyed.

47. The Security Council had primary responsibility for the maintenance of international peace and security, while the General Assembly and Economic and Social Council were responsible for resolving international economic, social, health and related problems, and for ensuring universal respect for human rights and fundamental freedoms for all through international cooperation (Chapter IX of the Charter). Article 24, paragraph 2, of the Charter gave no authority to the Security Council to exercise functions with respect to Chapters IX and X.

48. Another interesting element of that "new world order" had become apparent when the representative of the United States had stated to the Commission that, in future, only those States which came within certain parameters and subscribed to certain conceptions of human rights would be entitled to become members of the Commission. He had omitted to add that the only States which could be elected would be those that had been fortunate enough to receive the vote of the United States in the relevant Economic and Social Council election.

49. If that statement had been merely designed for domestic consumption in an election year, it would not have been of great importance. However, it appeared that such was not the case and that the proposal did indeed constitute an unacceptable attempt to deprive certain Member States of the exercise of their rights and privileges, in flagrant contravention of Article 5 of the Charter whereby only the General Assembly had such power and then only under certain strictly defined conditions.

50. At the same time, references were increasingly being made to "humanitarian intervention", which the international community was asked to accept as a "logical necessity" of the times. It was an expression that

produced the same reaction in his own delegation as terms such as "justified torture" or "legal" disappearances. Whether or not carried out under the cloak of humanitarian concern, intervention remained intervention and, as such, was illegitimate under Article 2 of the Charter.

51. It appeared that the Security Council would be given the power to impose various collective sanctions and even authorize armed intervention to improve the observance of human rights where their violation threatened world stability and security. What all that seemed to imply was the gradual erosion and eventual abolition of three key principles of international law, recognized in the Charter and of particular importance to small countries, namely, the equal rights and self-determination of all peoples, the sovereign equality of all States Members of the United Nations and non-interference in the internal affairs of States. Cuba had fought hard to achieve those rights and was not prepared to abandon any of them.

52. Since the mid-1960s, the international community had been establishing treaty and non-treaty mechanisms in the United Nations system for the promotion, protection and full realization of all human rights and fundamental freedoms. Under the various legal instruments adopted by the United Nations over that period, treaty bodies had been set up which worked, with some financial and practical difficulties, in a clearly established manner, of which all the Member States were perfectly aware.

53. In parallel, the Economic and Social Council and its subsidiary human rights bodies had established procedures to deal with communications received by the Secretary-General from non-governmental sources concerning human rights violations. Despite the initial reservations of many Member States, that confidential procedure had proved its worth over the previous 20 years. Other organizations, including ILO and UNESCO and various regional intergovernmental organizations, had also established treaty bodies dealing with human rights and fundamental freedoms.

54. In addition, special public procedures had been established to examine the human rights situations in specific countries or territories and, since 1980, to consider themes, such as enforced disappearances and torture. The special procedures had been established with a very general mandate and the more detailed aspects of their workings were not always very clear. In addition, the time-scale under which they operated was often limited. The Commission had previously called for the more effective functioning of the treaty mechanisms and his delegation felt that the special procedures also deserved such consideration so that, in the near future, the various aspects of their operation could be fully discussed.

55. To that end, the Secretary-General should provide the Commission at its next session with precise details on key aspects of the original mandates for those procedures and on the conceptual, normative and procedural frameworks in which they functioned. It would be also useful to know the criteria applied by the Centre for Human Rights when deciding on the admissibility of communications containing allegations of human rights violations.

56. The Commission should also urge all those involved in such procedures to conduct themselves with due discretion and independence, guided by the principles of non-selectivity, impartiality and objectivity so as to conform to the humanitarian spirit which should govern their work and to avoid the use of the procedures for political ends. It should also insist that in all cases the standards, criteria and practices established by the United Nations with respect to the handling of communications should be applied.

57. In conclusion, he wished to point out to the delegation of Australia that the principle of non-selectivity was not limited to the declaration that no region was exempt from scrutiny by the United Nations with regard to its specific problems in the field of human rights. That principle meant, in fact, the ethical inadmissibility of applying a special procedure to a Member State whilst refusing to adopt a similar policy in relation to others whose human rights situations were even worse. If the Australian delegation was prepared to cooperate with the Commission, as his own delegation had done in 1988, and receive a mission to examine in situ, difficulties connected with the situation of Australia's Aboriginal population, for instance, his own delegation would sponsor a draft resolution to that effect.

58. Mr. NZEYIMANA (Burundi) said that human rights represented a field of continuing struggle which related not only to civil and political rights, but also to the need to overcome problems of poverty and underdevelopment which were inimical to the enjoyment of those rights.

59. Those who had followed recent developments in his country would be aware of the efforts made by the new Government to restore certain rights and freedoms whose exercise had previously been frustrated. In particular, it had ratified the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, together with a number of other relevant international instruments. It was also encouraging the establishment of non-governmental organizations for the protection of human rights and the introduction of a policy of voluntary repatriation, settlement and social and vocational readjustment of Burundi refugees abroad.

60. The State Security Court, which had exceptional powers, was to be abolished, and a disciplinary council established to investigate cases of abuse of authority by members of the police force. Training courses on human rights and democratic institutions for officials of the judiciary and the police were being provided and, finally, a revised code of procedure for pre-trial detention was in preparation. The aim of all those initiatives was to create a framework which would promote greater awareness of human rights at the national level, an awareness which was itself fostered by the rapid opening up of political pluralism and the forthcoming adoption, by referendum, of a new Constitution.

61. The new Constitution would make provision, inter alia, for an individual's right of direct access to the Constitutional Court, and would ensure freedom of the press through the establishment of a National Communications Council.

62. In general, considerable progress had been made in Burundi in promoting awareness of human rights, although much remained to be done. The independent

non-governmental organizations would have an important role to play in that process, as would the technical advisory services provided by the United Nations. In that connection, he welcomed the financial assistance provided by certain countries for the funding of consultancy services in the human rights field.

63. Mr. Solt (Hungary) resumed the chair.

STATEMENT BY THE MINISTER OF JUSTICE OF RWANDA

64. The CHAIRMAN welcomed the Minister of Justice of Rwanda and invited him to address the Commission.

65. Mr. NGIRUMPATSE (Rwanda) said that the destructive war imposed on Rwanda since 1 October 1990, from and with the support of Uganda, was still under way despite the many initiatives taken by his Government to bring it to an end. Indeed, the insurgents had transformed their war of aggression into guerrilla warfare and had, since November 1991, been carrying out continual raids across the border from their sanctuary in Uganda.

66. Anxious to see a rapid return of peace in the region and the country, his Government had tried, through bilateral contacts with Uganda and through regional cooperation, to put an end to the bloodshed. A bilateral summit meeting with Uganda in Zanzibar had not produced a positive outcome. The Dar-es-Salaam summit conference on 19 February 1991 had been devoted to the issue of Rwandese refugees. It had produced some promising results that should resolve that problem definitively. The mediation of President Mobuto of Zaire had led to the conclusion on 29 March 1991 of a ceasefire agreement between the Government of Rwanda and the Patriotic Front of Rwanda (FPR).

67. However, with the connivance of the Ugandan army, the insurgents had repeatedly broken the ceasefire agreement. After an initial complaint submitted at the Organization of African Unity Summit in June 1991, a regional summit meeting had been convened which had called upon the two parties to the conflict to agree to an immediate ceasefire and to enter into a political dialogue under the auspices of a mediator.

68. The first round of talks in the political dialogue had achieved nothing tangible and had shown that the FPR was not interested in ending the war. His Government had therefore entered into contact once again with the protector of the insurgents, the Ugandan Government. The only positive element to come out of that meeting had been an agreement between the two parties that France could send an observer mission to report on violations of the border between the two countries, a mission which was still carrying out its duties.

69. There had been a further meeting between the heads of State of Rwanda and Uganda on 19 January 1992 in Tanzania, at which it was agreed to take several measures to find a peaceful and lasting solution to the war. Unfortunately, not long after that meeting, a large-scale attack had been launched, and the Government of Uganda, in contravention of the agreement between the two Governments, had refused a Rwandese delegation access to the border areas from which the attack must have been launched.

70. The steps taken by his Government gave ample proof of its firm desire, and that of the people of Rwanda, to end the war. However, since the aggressors had shown such bad faith, he called upon the international community to join in its efforts to put a final end to the conflict. The war was not limited to the battlefield. The rebels had been attempting to tarnish the image of Rwanda since the beginning of the war, particularly with regard to respect for human rights, making accusations which had been taken up by some ill-informed non-governmental organizations. Despite such allegations, his Government respected human rights since Rwanda was a State subject to the rule of law.

71. In that connection, it was noteworthy that, in April 1991, his Government had decided, in a spirit of national reconciliation, to free all persons who had been detained as a result of the war. In addition, some major legislative measures proclaiming an amnesty had also been promulgated. One such measure would enable persons who had committed certain offences to participate in the consolidation of democracy on the occasion of the restoration of pluralism in Rwanda. Another declared an amnesty for refugees guilty of certain offences. He wished to point out that the authorities of the Republic of Rwanda had not limited themselves to granting amnesties or pardons but had also ordered the reinstatement of civil servants and private-sector employees who had been accused or found guilty of offences.

72. As for the allegations concerning extrajudicial executions, it was important to recognize that, since the outbreak of the war, Rwanda had experienced interethnic tensions which had sometimes degenerated into bloody conflicts. Where conflict had broken out, it was due to panic in the population caused by the proximity of atrocities committed by the insurgents. In other places, interethnic disturbances had followed provocation by Tutsi who asserted not only that the victory of the rebels was certain, but also that it would be followed by the extermination of the Hutu.

73. Fortunately, wherever disturbances had broken out, the authorities had taken appropriate action to restore order, and the Government Procurator's Office had carried out judicial enquiries without favour to the security forces or the officials in charge of administration and security. The measures adopted had largely ensured that the disturbances did not recur, although it was not always easy to prevent isolated incidents of violence on the part of individuals or groups.

74. It should be emphasized that all allegations of excesses were properly investigated by the authorities. The lists submitted by opponents of the Government to the international organizations regarding persons who had supposedly disappeared should be treated with caution. Some of the persons listed were in fact alive, others had never existed, and yet others had been amnestied. Reports of massacres ought also to be regarded with scepticism.

75. Nevertheless, incidents of communal strife did occur, and were exacerbated by the war that had been in progress since October 1990. In the commune of Murambi in particular, where the population was composed equally of Hutu and Tutsi, factional rivalry had long existed: the Tutsi, however, and their young people in particular, had been in contact with the FPR and had accordingly stepped up their acts of provocation against the Hutu. It was the

policy of the FPR to encourage such disturbances but, in the above-mentioned incident, the authorities had succeeded in restoring calm, and only one person had been killed.

76. Other unfounded allegations related to violations of the freedom of the press. He was able to state categorically that the country's Constitution affirmed the right of the individual to express his opinions in every way, except where such expression led to the commission of an offence. A recent press law had reaffirmed that right. In one case which had arisen the previous year, an editor had been sentenced to four years' imprisonment, but that was because he had been found guilty of flagrantly insulting the Head of State. At his trial, he had been represented by two Belgian lawyers of his own choosing. The Government's policy in such matters was that freedom of the press was to be encouraged, since the process of democratization could not develop in the absence of a well-informed public opinion. That process had reached an advanced stage prior to the outbreak of the war in 1990, and had continued thereafter, despite the hostilities.

77. A Political Parties Act had been adopted, and 12 parties meeting the legal requirements had been duly registered. A transitional period would lead in the near future to the holding of democratic elections at the communal, legislative and presidential levels. If those guilty of aggression against Rwanda truly believed in democracy, they would heed the numerous appeals addressed to them and lay down their arms: democracy could be achieved only through the ballot box and not by force of arms.

78. One question which should be of concern to the international community in general and to human rights bodies in particular was that of the kidnappings and assassinations carried out by the FPR. In many cases, and especially in the area of the Ugandan frontier, the FPR had attacked villages, massacring women and children and the elderly and destroying their homes: young men of military age were often, if not brutally killed, forcibly conscripted into the ranks of the insurgents.

79. As far as killings were concerned, the available statistics were incomplete, but they indicated that more than 1,600 civilians had been savagely murdered by the FPR, and many others seriously wounded. In addition, over 120,000 people had been forced to leave their homes to seek refuge in improvised camps, where they were living in appalling conditions. The evidence showed that the forces of the FPR did not respect the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

80. As he had already stated, the Regional Conference held at Dar-es-Salaam in February 1991 to discuss the refugee problem had achieved some important results. Rwanda had undertaken to accept, with the assistance of the international community, all Rwandese refugees who opted for peaceful repatriation, while the countries sheltering the refugees had agreed to settle those who chose to remain and to grant them citizenship in accordance with their domestic legisation.

81. The Conference had also entrusted to the Organization of African Unity and the United Nations High Commissoner for Refugees the task of preparing a Plan of Action to implement the decisions it had taken. The Plan of Action

envisaged the holding of a donor conference, but the proposed conference had had to be postponed from late 1991 to February 1992, and was liable to be postponed yet again. Those delays in implementing the Plan of Action were attributable to the actions of the FPR and its sympathizers in linking the refugee problem to the problem of the war they themselves had instigated.

82. For its part, his Government called on OAU and UNHCR and all the countries concerned to do their utmost to ensure that the Plan of Action was prepared as soon as possible, thus enabling the donor conference to take place without further delay. It was also taking steps to prepare for the repatriation of the refugees by identifying resettlement zones and by promulgating a general amnesty. With a view to achieving a lasting national reconciliation, 5,871 detainees convicted by the State Security Court of complicity with the FPR had already been released.

83. In conclusion, he said that, as an expression of its continuing concern for human rights, his Government had prepared two bills relating to the establishment of a new Supreme Court of the Judiciary and a Bar Association: both bills would shortly be examined by Parliament. It was also, in conjunction with embassies based in Rwanda, organizing seminars and lectures on human rights.

84. The World Conference on Human Rights, to be held in 1993, would greatly contribute to greater public awareness of the issues involved, but his delegation had unfortunately been unable to participate in the first meeting of the Preparatory Committee for the Conference. He appealed, therefore, to its organizers to enable the developing countries, particularly the least developed ones, to take an active part in all subsequent meetings of the Preparatory Committee.

The meeting rose at 1.05 p.m.

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COMMISSION ON HUMAN RIGHTS

Forty-eighth session

SUMMARY RECORD OF THE 34th MEETING
(FIRST PART*)

Held at the Palais des Nations, Geneva,
on Wednesday, 19 February 1992, at 3 p.m.

Chairman: Mr. SOLT (Hungary)

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Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission:

(a) Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms

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* The summary record of the second part of the meeting appears as document E/CN.4/1992/SR.34/Add.1.

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(b) National institutions for the promotion and protection of human rights

(c) Coordinating role of the Centre for Human Rights within the United Nations bodies and machinery dealing with the promotion and protection of human rights (agenda item 11) (continued)

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(a) Question of human rights in Cyprus

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The meeting was called to order at 3.15 p.m.

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION:

(a) ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

(b) NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

(c) COORDINATING ROLE OF THE CENTRE FOR HUMAN RIGHTS WITHIN THE UNITED NATIONS BODIES AND MACHINERY FOR DEALING WITH THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (agenda item 11) (continued)

(E/CN.4/1992/21 and Add.1; E/CN.4/1992/22; E/CN.4/1992/23; E/CN.4/1992/24; E/CN.4/1992/43 and Add.1 and 2; E/CN.4/1992/58; E/CN.4/1992/73; E/CN.4/1992/NGO/1; E/CN.4/1992/NGO/21)

1. Mr. SEZGIN (Observer for Turkey) said that although the system for the protection and promotion of human rights and fundamental freedoms created by the international community had much to recommend it, it was obviously incapable of preventing violations, which persisted throughout the world. There was, in point of fact, an obvious contradiction between the importance at present accorded fundamental principles at the international level and the violations and threats to which they were exposed in practice. That inevitably raised the question of the effectiveness of the approach used at the present time to protect and promote human rights and fundamental freedoms.

2. Most of the violations recorded were committed in crisis situations that pitted Government security forces against armed groups which had adopted violence as a way of attaining their objectives, either ethnic or ideological. Terrorism, which was practised by virtually all such groups, violated elementary rights and threatened human rights and fundamental freedoms. Although that did not justify violations by persons who possessed legitimate powers of coercion and who were therefore primarily responsible for the protection and promotion of such rights, it was obvious that, by concentrating solely on allegations of violations attributable to States, the present human rights system would have the end result of exacerbating and prolonging conflicts in so far as armed groups regarded themselves as more free and even encouraged in their struggle. Paradoxically, the human rights situation in the country concerned became worse.

3. A peaceful and lasting solution, even through dialogue, could not be found to an ethnic or ideological conflict that had degenerated into an armed struggle if the State concerned did not have a representative Government capable of taking a decision of that importance on behalf of its citizens. In any event, no terrorist group could participate in a peace process before it had laid down its arms. Democratization should precede the peaceful settlement of the conflict, but armed struggle must cease before the democratic process could begin. As had already been emphasized in the Commission by several speakers, including the Under-Secretary-General of

the United Nations, the Secretary of State for Humanitarian Affairs of the French Government, the Indian Ambassador and the United States Ambassador, democracy was the only element capable of giving full rein to human rights and fundamental freedoms, since it enabled political or other minorities, namely, all opposition groups in general, to realize their rights by legal means.

4. His Government therefore called upon the Commission to attach greater importance to the concept of democratization by considering the possibility of establishing machinery designed to promote the introduction and development of democracy in member countries desiring such assistance. Its approach could be based on the method adopted by the Conference on Security and Cooperation in Europe. Technical and financial assistance to third world countries would thus supplement the commendable but inadequate activities of the Centre for Human Rights, that approach being in complete conformity with the United Nations General Assembly resolutions on the subject, and specifically resolution 40/61. His delegation also suggested that terrorism and attempted violations by terrorist groups of human rights and fundamental freedoms within the meaning of article 30 of the Universal Declaration should also be taken into consideration in discussions of human rights violations in a given country within the framework of the United Nations human rights system.

5. Moreover, even if international problems of an essentially political nature also had a human rights aspect, undue politicization of the Commission's agenda complicated an already very difficult task. In the view of his delegation, a way must in future be found of depoliticizing its agenda and referring political problems and the human rights problems that they raised to the competent bodies of the United Nations system.

6. Mr. KEDZIA (Observer for Poland) said that the Commission should adopt a position concerning the impact of AIDS on human rights. His delegation, together with other delegations of members of the Commission, intended to submit a draft resolution entitled "Discrimination against people infected with the human immuno-deficiency virus (HIV) or with the acquired immuno-deficiency syndrome (AIDS)", the text of which would be distributed in due course. The draft emphasized the need to prevent any kind of discrimination resulting from the AIDS pandemic. Persons infected by HIV aroused social fears and various other emotional reactions, and it was therefore for Governments to ensure that their rights were respected. The draft resolution appealed for a spirit of solidarity, compassion and tolerance, and reminded all States of their obligation to ensure the full enjoyment of human rights by persons with HIV or AIDS, their families and those associated with them, and that they should refrain from any discriminatory action or stigmatization. The draft referred particularly to women, children and other vulnerable groups and called upon human rights treaty bodies and bodies of a similar nature "to give full attention to monitoring States parties' compliance with their commitments under the relevant human rights instruments regarding the rights of people infected with HIV or AIDS [...] or people presumed to be at risk of infection". Lastly, the draft expressed support for the preparation by Mr. Varela Quiros, Special Rapporteur of the Sub-Commission, of reports on problems and causes of discrimination against HIV-infected people or people with AIDS.

7. His delegation congratulated the Austrian delegation on its proposal for an emergency intervention procedure to protect human rights in certain crisis situations, for it appeared to satisfy current requirements even though it could be improved. Existing human rights protection machinery suffered from obvious shortcomings. For example, the Commission could in theory defer to its subsequent session consideration of a case even if it involved gross and flagrant violations of human rights. From the standpoint of the victims, however, it was inadmissible that it should lack effective machinery enabling it to take immediate action. In certain situations waiting meant failure. It appeared that the Economic and Social Council had borne such considerations in mind in adopting resolution 1990/48 on the "enlargement of the Commission on Human Rights and the further promotion of human rights and fundamental freedoms", which authorized the Commission to meet exceptionally between its regular sessions provided that the majority of States members of the Commission so agreed. That rule should, however, be supplemented by procedure making it possible to take action in emergency situations, and in the view of his delegation the Austrian proposal did precisely that. It kept a proper balance between the principles embodied in the Charter of the United Nations concerning State sovereignty and human rights protection, and it was also workable even though it could be improved in certain respects. It could, for example, be pointed out more clearly that the proposed machinery was also intended to help the countries concerned, that the group of experts appointed should, if possible, try to enlist the cooperation of the Governments concerned and, if necessary, offer its good offices. His delegation shared the view expressed two days previously in the Commission by the President of the Swiss Confederation to the effect that the Austrian proposal constituted a serious basis for the discussion of emergency procedure in the framework of the Commission on Human Rights.

8. His delegation once again expressed its support for efforts to modernize the Commission's organization of work and would continue to contribute to them. The social and political changes taking place throughout the world made such modernization indispensable. Informal discussions were proceeding on the restructuring of the agenda and on making better use of the time available. Moreover, recognition of the fact that human rights constituted the basis of the international community implied the strengthening of the United Nations Centre for Human Rights. In paying tribute to the valuable and vital work being done by its staff, it should not be forgotten that the Centre was facing increasingly difficult logistical and financial problems. His delegation considered that, in the discussion on the allocation of resources, the attention accorded the Centre's needs should be proportional to the importance of the tasks entrusted to it. In conclusion, his delegation hoped that the outcome of the World Conference on Human Rights would be fruitful and indicated its intention of contributing to its results.

9. Mr. LAGMARI (Observer for Morocco) noted that the work achieved by the international community through the Commission on Human Rights, assisted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, had made considerable progress possible, particularly as regards the codification of legal norms which were being expanded to cover all categories of persons. So much progress had been made that States parties to various international instruments were confronted by problems connected with

the preparation and submission of reports to various monitoring bodies, and the treaty monitoring bodies themselves were encountering financial difficulties in carrying out their work. An increasingly heavy burden was being shouldered by the Centre for Human Rights. Overlapping and duplication were also evident in the activities of various bodies, so that the Commission should give thought to the rationalization of their work. In so doing, however, it should bear in mind that underdevelopment remained a threat to peace throughout the world, and at the present time constituted the greatest challenge that the international community had to face.

10. Ten years previously Morocco had proposed the organization of a world conference on human rights in order to take stock of what had been done; now his delegation was able to thank Italy for its generous offer to act as host to that conference which, in its view, should study obstacles to the realization of human rights. The establishment of national machinery, whether political, legal, administrative or other, was a precondition for the protection and promotion of human rights. His delegation had been gratified by the holding, in October 1991, of the first international meeting on national institutions for the promotion and protection of human rights, organized by the Centre for Human Rights in cooperation with the French Human Rights Commission. The results of that meeting would be of great value to the World Conference in its work.

11. Considerable progress had been made in Morocco thanks to the assistance of the Human Rights Advisory Council that had been set up in May 1990. The Council's task was to follow closely the development of the human rights situation in the country and to submit suggestions and recommendations to the King with a view to the adoption of appropriate measures. Those suggestions and recommendations had already resulted in the adoption, on 12 July 1991, of draft legislation for the creation of the administrative tribunals in various regions of the Kingdom, in the unaminous adoption of a draft law amending certain articles of the Code of Penal Procedure concerning the period of police custody and pre-trial detention, as well as in measures concerning the royal pardon under which prisoners had been released and the sentences of others reduced. Other recommendations of the Council should result in instituting greater control over pre-trial detention, increasing the staff of the judicial police, improving living conditions in places of detention, according priority to investigations of cases involving pre-trial detention and effecting autopsies in all cases of death during periods of police custody whenever there were indications that such death might have been caused by ill-treatment.

12. Moreover, a new administrative unit had been added to the Ministry of the Interior in January 1991, namely, the Department for Staff Training, Codification and Public Freedoms, which was responsible for ensuring respect for legislation on public freedoms and supervising human rights instruction in training schools for staff responsible for the application of legislation. Lastly, a ministerial committee had been appointed to follow up the application of the recommendations formulated by the Human Rights Advisory Council.

13. Morocco's commitment to human rights had been reaffirmed by His Majesty Hassan II at the summit meeting of heads of State or Government of countries members of the United Nations Security Council on 31 January 1992. The King had stated that human rights constituted a universal concept which brooked neither derogation nor questioning and had quoted the famous words of the second Caliph of Islam, Omar Ibn Al-Kattah who had proclaimed the underlying principle centuries previously, namely, "How can man be enslaved if he was born free?".

14. Mrs. PAL (International Alliance of Women) said that, on the question of ways and means of improving the effective enjoyment of human rights, the experience of the first decade of the AIDS scourge which struck without discrimination had confirmed that respect for human rights was essential not only for the liberty and dignity of the individual concerned but also for public health and the well-being of the community. As noted by the United Kingdom representative, action to prevent discrimination against AIDS sufferers should be part and parcel of public health policies since fear of exclusion masked the extent of the disease, which made efforts to prevent the further spread of HIV more difficult. In his progress report (E/CN.4/Sub.2/1991/10), Mr. Varela Quiros, Special Rapporteur of the Sub-Commission, indicated clearly that discrimination against persons with AIDS took many forms. It could be the result of discriminatory legislation or the practices of public authorities, or yet of the attitude of groups of individuals. It was not only people with AIDS who suffered discrimination but also very often their families and friends.

15. On the other hand, the AIDS pandemic had given rise to unprecedented cooperation between United Nations bodies and non-governmental organizations, as well as new initiatives intended to protect individuals against discrimination or other violations of their rights. In that connection, she noted however that although the General Assembly, the World Health Organization and other bodies had confirmed the commitment of States to combat AIDS-related discrimination, the Commission had not yet adopted any substantive resolution on that important issue, and hoped that that omission would be corrected at the present session.

16. Yet discrimination was not the only consequence of the AIDs pandemic, which raised a number of other issues of concern to the Commission, such as the rights of the disabled or the right of persons to leave and to return to their country. AIDS had served to highlight a number of existing violations of rights which had not always received the attention they deserved. For example, women and other disadvantaged groups who were unable to exercise their rights fully were more vulnerable to the risk of infection. The Commission should therefore give priority to the question of women's rights in the AIDS context, since respect for their rights saved lives. The fact that other United Nations bodies were dealing with women's problems should not inhibit the Commission from protecting their rights. The urgency of protecting their lives in the AIDS context should give renewed impetus to cooperation between the Commission on Human Rights, the Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women.

17. Vulnerability to HIV infection was also increased by poverty, and AIDS statistics were beginning to indicate a link between poverty and infection. When living conditions became difficult, men, women and even children might seek solace in drugs or prostitution. The economic recession in many countries was dislocating medical supplies and health care - the situation of children in Romania and of patients in the former USSR being tragic examples.

18. Nor should the social dimensions of the pandemic be overlooked. WHO predicted that by the year 2000, 10 to 15 million children may have been orphaned as a result of AIDS. In the interest of providing better protection of the life and rights of children, who constituted the main vulnerable group, the Commission should seek ways of increasing its cooperation with other international bodies and competent United Nations organs.

19. The protection of individual human rights and dignity were also of major importance in the context of AIDS. In the opinion of WHO and public health experts throughout the world, nothing justified the adoption of public health measures that restricted the rights or freedoms of persons with HIV or AIDS. The Commission had before it the Rights and Humanity Declaration and Charter on HIV and AIDS which set out the norms and principles of ethics and humanity applicable in the context of AIDS and indicated the specific responsibilities of States, professionals and other social institutions. The importance of the role played by self-help organizations of persons directly affected by discrimination and cooperation at all levels was not negligible, however. To sum up, the Commission could encourage States to promote full respect for human rights in the context of the AIDS pandemic by developing an appropriate legal framework, launching public education and awareness campaigns, emancipating disadvantaged social groups both legally and politically, and assisting individuals who felt excluded or needed assistance. Those strategies were essential in order to bridge the gap between the aspirations of human rights texts and the reality of the lives of the many millions of persons affected by AIDS.

20. Mr. MACPHERSON (Friends World Committee for Consultation) said that the Quakers and the World Council of Churches welcomed the Secretary-General's analytical report on internally displaced persons (E/CN.4/1992/23). The Churches, in accordance with their mission, had a long tradition of trying to meet the needs of displaced persons. They had also, like the non-governmental organizations, warmly welcomed the Commission's adoption at its previous session of resolution 1991/25 entitled "Internally displaced persons"; that resolution, sponsored by 18 States, had been adopted without a vote.

21. The majority of internally displaced persons fled their homes for the same reasons as refugees, but because they remained within their own country they were not treated as refugees by the international community. States could not remain indifferent to the fact that a growing number of internally displaced persons might be forced to seek refuge in neighbouring countries. It was therefore in the interest of the international community to tackle the root of the problem and the causes that brought about displacement.

22. The World Council of Churches and the Quakers were deeply concerned by the absence of any United Nations body to guarantee displaced persons international protection. There was a need for better linkage between the

United Nations human rights system and the United Nations bodies responsible for humanitarian relief. The Friends World Committee for Consultation proposed that the Commission should establish a working group consisting of five independent experts to examine the protection needs of internally displaced persons. That working group should submit a comprehensive report, together with its conclusions and recommendations, to the Commission at its next session. The Commission should also consider the question of displaced persons and refugees under a separate agenda item.

23. Mrs. COHEN (Refugee Policy Group) expressed satisfaction that the Commission on Human Rights was dealing with the protection of internally displaced persons, since there were at present more than 20 million persons displaced within the borders of their own countries (13 million in Africa, 5 million in Asia, over 2 million in Europe and 1 million in the Americas).

24. International efforts had so far focused mainly on their relief needs, and although the General Assembly at its last session had created the post of emergency relief coordinator to provide relief and assistance in humanitarian emergencies, his mandate did not include protection needs. In that respect the Commission could play an important role by creating machinery to examine and monitor the human rights situation of internally displaced persons and thereby afford them better protection and physical security.

25. In June 1991 the Refugee Policy Group had convened a meeting in Washington D.C. of 40 experts, comprising representatives of the United Nations and regional organizations, representatives of States, international law experts and members of humanitarian organizations. The report on the work of that Conference was available on request. Participants had expressed the hope that the Commission would create machinery to meet the protection needs of internally displaced persons, to act on an emergency basis and take action when masses of people were displaced. They had also proposed that the United Nations should designate human rights officers to accompany humanitarian relief missions in the field, since that would enable them to evaluate immediate and longer-term protection needs, to recommend how such needs could best be met, and to advise on when conditions were sufficiently safe to warrant the return home of displaced persons.

26. Protection could also be increased by the elaboration of guidelines or principles concerning their human rights. Such principles, drawn from both humanitarian and human rights law, would seek to prohibit (1) policies of deliberate starvation, including obstruction of peoples' ability to produce food; (2) forcible relocations on political, racial, religious or ethnic grounds; and (3) interference with humanitarian access and assistance. The Refugee Policy Group urged the Commission to assume its responsibilities in respect of displaced persons and to respond to the human rights dimension of humanitarian emergencies.

27. Mrs. TOM (Caritas Internationalis) said that Caritas Internationalis, which represented nearly 150 national organizations with a social mission, had joined the Friends World Committee for Consultation and the World Council of Churches in a short written statement on the subject of internally displaced persons (E/CN.4/1992/NGO/1).

28. The Secretary-General's analytical report pursuant to Commission resolution 1991/25 (E/CN.4/1992/23) should have the effect of drawing attention not only to the assistance needs of such persons but also to their need for protection in human rights matters. Since they had not left their country, they did not come under the mandate of the United Nations High Commissioner for Refugees (UNHCR) and remained, at least theoretically, the responsibility of their own Government. Whereas there were approximately 17 million refugees throughout the world, the number of internally displaced persons was estimated at about 24 million, the vast majority being in the developing countries of Asia, Latin America and especially Africa. In some of the affected countries, such persons accounted for well over 10 per cent of the entire population. All too often the State was unable to assume the burden they represented, since funds were lacking and administrative structures were saturated, and lack of protection might oblige them to seek refuge in neighbouring countries.

29. Although the factors causing refugees and displaced persons to flee their homes were often identical, there were as yet no generally accepted international standards applicable to all internally displaced persons or any international body responsible for the protection of their rights. It had even been considered that, in so far as the ultimate concern was the effective enjoyment of basic rights by all persons without discrimination, no distinction should be made between a refugee and an internally displaced person.

30. Some machinery had admittedly been set up during the past few years, often on an ad hoc basis as a result of the efforts of several Governments and agencies as well as individuals. In his important statement two days previously, Mr. René Felber, the President of the Swiss Confederation, was undoubtedly right in emphasizing prevention, but in the meanwhile and until the causes of the problem had been eliminated, the immediate duty was to save lives in accordance with the principle of the shared responsibility of humanity as a whole to which Pope John Paul II had referred on 1 May 1991 in his encyclical Centesimus Annus. What was needed, therefore, was a clear mandate at the international level and machinery to provide protection and assistance to the millions of internally displaced persons.

31. Mr. MARTA (International Work Group for Indigenous Affairs) said he welcomed the Commission's decision, pursuant to its resolution 1991/25, to include in its agenda the problem of internally displaced persons, a topic with which he was familiar and which often concerned indigenous and tribal peoples who had been evicted from their lands. He noted that the problem had three aspects. First, the deliberate displacement of populations by Governments without the consent of the people involved reflected a policy that had been initiated during the Anglo-Boer War in South Africa. Although the "concentration camps" of that time were now called "strategic villages", the policy was the same and, in the absence of any control, led to persistent and flagrant violations of human rights. The international community must therefore deal with that practice as a matter of priority, since it did nothing to solve long-term strategic and economic problems that were invoked by the authorities in justifying that policy.

32. Secondly, people fled their homes in order to escape armed conflict or ethnic strife. It would be desirable for the Commission to appoint a working group or a special rapporteur to deal with the situation of such persons who were often isolated and exploited in the areas to which they had fled and where international bodies found it difficult to assist them.

33. Thirdly, an "early warning system" should be introduced as suggested by Sadruddin Aga Khan, Special Rapporteur on mass exodus and refugee flows; he had also emphasized the need for "preventive diplomacy". People did not leave their homes without strong reasons, and therefore the United Nations system should act at the first signs of trouble, before the situation deteriorated and created regional instability and even conflict between States. The same was true of internally displaced persons. Efforts must therefore be made, individually as well as collectively - namely, in the framework of the Commission - to take the steps required to prevent conflicts, the first sign of which was often the displaced person.

34. Mr. KHADER (International Fellowship of Reconciliation) said he was a Palestinian by birth who had lived for years in Baghdad where he had taught geology. He appealed to the Commission to assist in the enforcement of international humanitarian law which had been seriously violated during the 1991 Gulf War by the allied forces led by the United States. Those legal provisions required that both sides to a conflict should protect civilians.

35. The question was not an academic one for him since a year previously he had lost his wife and four daughters in a United States attack on a civilian air raid shelter in Ameriyya in which his family had taken refuge, being unable to escape to Jordan. His own story was typical of the tragedies experienced by hundreds of thousands of Iraqi civilians. The air raid shelter in question, which was clearly identified as such, was specifically protected under international law by article 62 of Protocol I of the Geneva Conventions. How could the United States, with its advanced military technology, not have known that it was a civilian air raid shelter and not a military base? What were the "acts harmful to the enemy" that, under article 65, could have made that shelter lose its protective status? Why had the occupants of the shelter not been warned of the imminence of the attack and therefore been given time to evacuate it in accordance with the provisions of international law? Why was an international body not investigating the bombing of that shelter as well as all the others? What was the point of international law if there was nobody to monitor compliance? How could the American authorities demand that President Saddam Hussein and other Iraqi leaders should be tried and punished for their violations of international law when they evaded any accountability for their own actions? It would seem that very little progress had been made since the Middle Ages, for the loser was punished by the victor without anyone examining the victor's conduct.

36. He was appealing to the Commission in the hope that it would conduct an investigation of the matter. Indeed, a large number of questions had to be answered if future wars were to be fought with true respect for the lives of civilians. First, in bombing so many civilian structures and neighbourhoods, had the United States really "balanced" the suffering inflicted thereby on civilians and the military importance of its targets, as was required by international humanitarian law? Secondly, had Iraq's modern economic

infrastructure been destroyed because its military value had truly outweighed the terrible impact that its destruction had had on civilians? It was clear that the United States had violated a number of provisions of international humanitarian law. If conflicts were to be regulated and if civilians were no longer to be treated as pawns, the first step would be to apply those provisions. The Commission could begin that process by investigating the violations of international law perpetrated by the victor of the Gulf War, namely, the United States.

37. Mr. WADLOW (World Association for World Federation) said he wished to submit to the Commission the People's Decade of Human Rights Education (1991-2001), an international and non-governmental strategy to which the World Association subscribed. The Commission should support the Decade and, together with the Sub-Commission, pay greater attention to human rights education which should be included in the agenda of the World Conference on Human Rights in 1993. The Decade comprised three main topics, namely, knowledge, cooperation and empowerment. One important aim of the Decade was the widest possible dissemination of knowledge about international human rights as well as the procedures needed to implement and enforce them. The authors of the Universal Declaration of Human Rights had recognized the importance of education by stating in the preamble and body of the Declaration that it was vital to promote and strengthen respect for human rights and fundamental freedoms as well as to promote understanding and tolerance among all nations, racial or religious groups. That knowledge was at the heart of the World Human Rights Information Campaign launched in 1989 by the Commission and United Nations General Assembly. He paid tribute for the information efforts made by the Centre for Human Rights and noted that the task was of such magnitude that it could not be accomplished by isolated efforts.

38. For that reason, the Decade also emphasized cooperation through the establishment of international networks for the production of video and audio programmes. Cooperation was also required for teacher training in an institutional or other framework, for example by using the historical and cultural memory of peoples to send a message of hope, respect, equality and dignity. The countries members of the Commission, the United Nations Secretariat, the non-governmental organizations and the media were all educators in human rights, and were helping to demonstrate that respect for human rights was a serious policy aim and not hypocrisy or political manipulation. Yet some of the mystery surrounding legal issues had to be stripped away if the peoples of the world were to see more clearly the direct relationship between all those efforts and their welfare and dignity.

39. Lastly, empowerment was necessary in order to promote participation, reciprocity and accountability at all levels of society and thereby to strengthen the democratic process. It was in that spirit that the Decade should be supported by all.

40. Mr. TEITELBAUM (American Association of Jurists) noted that United Nations human rights and other activities were jeopardized by a financial shortfall due to delays in the payment of contributions by most Member States; on 31 October 1991 unpaid contributions had totalled US$ 1 billion, which was equivalent to the annual budget of the United Nations. In his annual report for 1991, Mr. Pérez de Cuéllar,

the retiring Secretary-General, had said that contributions of States to the United Nations were minute compared to their military expenditure. The annual United Nations budget was equivalent to the price of 15 F-18 combat aircraft. It was to be hoped that the reforms being introduced by the new Secretary-General would eliminate the reasons invoked by some of the main contributors for allowing that enormous debt to accumulate. In view of the intensification of the problem of racism in a number of countries it was particularly regrettable, for example, that the Committee on the Elimination of Racial Discrimination would be unable to meet in March because it lacked US$ 17,000, or in other words US$ 130 for each State party to the International Convention on the Elimination of All Forms of Racial Discrimination.

41. With a view to giving effect to the proposals made on 4 December 1991 by Mr. Pérez de Cuéllar, the American Association of Jurists suggested that a tax on international arms sales should be introduced, the proceeds being channelled directly into a United Nations account, and that the fund for peace-keeping operations proposed by the retiring Secretary-General should be financed from surplus contributions that certain countries had received from other States for the Gulf War.

42. As regards the rules of the game applicable by United Nations human rights bodies, the universally-applicable peremptory rules of the Charter of the United Nations, the Universal Declaration of Human Rights and the two International Covenants on human rights, as well as in jus cogens, customary law and the concept of the intangible core of human rights should first be clearly identified. The peremptory nature of customary law and jus cogens was explicitly recognized in articles 38 and 53 of the Vienna Treaties of 1969 and 1986. Moreover, Article 38 of the Statute of the International Court of Justice stated that the Court must apply international custom and the general principles of law recognized by civilized nations. The peremptory rules of international law therefore stemmed from a large number of sources. Furthermore, the International Law Commission had indicated that it was not the form of a general rule of international law but rather the specific nature of the subject to which it was applied that could impart it a peremptory nature. The Rector of the University of Fribourg, for his part, had stated at a human rights seminar that the difference between peremptory rules and other rules depended on the importance of such rules and their recognition as such by the international community as a whole. That meant not that each State had, in that respect, a right of veto (which would be inconceivable) but that the rules in question should be recognized by all the main elements of the international community. In other words, it was for the international community as a whole to impose on States the rules which had been invested with that character.

43. Three conclusions of a practical nature could be drawn from what he had said. First, all States should, on the international level, respect peremptory rules applicable to human rights even if they had not subscribed to the instruments in which they were set forth. Secondly, consensus or unanimous acceptance by all States was unnecessary for a rule to become peremptory. Thirdly, the peremptory nature of a rule was not the result of the will of a group of States or even of the majority, but of the main elements of the international community.

44. Objectivity and impartiality constituted another rule of the game. Yet the uninformed reader perusing the documents submitted to the Commission might reach the conclusion that human rights were violated in only one-third of the world. Even though working groups, special rapporteurs and experts sometimes received incomplete information, it was their duty to try to present a complete picture of the situation in question without leaving anything out. Violations of the principle of the independence of the judiciary also occurred in the developed countries, for example, as well as other abuses such as racial discrimination, torture, summary execution, arbitrary detention, involuntary disappearances and infringement of freedom of expression. Lastly, economic, social and cultural rights should be accorded the attention they deserved, but not to the detriment of civil and political rights in the name of the principle of the indivisibility of all rights.

45. In view of the growing workload of the Centre for Human Rights, steps should be taken to increase its budget which, at the present time, accounted for only 1 per cent of the total United Nations budget, to improve its management and to increase its staff by recommending that vacant posts should be filled. With regard to recruitment, respect for the provisions of Article 100 of the Charter of the United Nations on the independence of staff members should be restored and staff receiving remuneration from Member States - which had the effect of increasing geographical imbalance in violation of Article 101 of the Charter - should no longer be recruited. Lastly, a database should be developed that could be used not only by treaty monitoring bodies but also at all stages in the Centre's work, from the collection of information to the follow-up of cases and situations. That data base would be accessible to committees responsible for monitoring the application of covenants, working groups, experts and special rapporteurs. That would imply, however, putting an end to the confidential nature of certain procedures, such as that provided for in Economic and Social Council resolution 1503 (XLVIII). That sort of confidentiality was anachronistic and could be justified only in the few exceptional cases where discretion might be the key to the success of negotiations.

46. Mrs. GUZMAN (Latin American Federation of Associations of Relatives of Disappeared Detainees) impugned in advance any suggestion that her Federation was bent on artfully skewing the purpose of agenda item 11. The question under consideration, which concerned the functioning of various national, regional or international human rights bodies, was closely linked to the question of respect for those rights which arose in extremely down-to-earth terms for the non-governmental organizations. Ever since the international community had been taking a greater interest in human rights, institutions and bodies of all kinds had been created in many countries to protect them. Yet the mere creation of bodies was not enough; they had to be effective, and it was the non-governmental organizations that were in a position to inform the Commission about their functioning. In Colombia, for example, the Presidential Human Rights Council usually notified complainants that their case was being examined; as for the "guardian of the people" and "guardianship action" which had recently been introduced, they remained in limbo for want of a decree providing for their application. In Paraguay, the Government Procurator's Office had not yet taken into account the statements and testimony of victims of General Stroessner's dictatorship, and the public servants whose names were associated with specific offences were still

employed. In Mexico, the National Human Rights Commission, established on 6 June 1990, recorded complaints, undertook the necessary investigations and duly prepared reports, but its jurisdiction was limited since it did not take action at the sentencing stage and on substantive legal aspects. The independence of the judiciary should, of course, be respected but the serious shortcomings of the system, including delays in the administration of justice which had been condemned by a number of rapporteurs and experts, should not be overlooked.

47. General Assembly resolution 45/167, which had been mentioned by the Secretary-General in his report E/CN.4/1992/58, was interesting for two reasons, namely, it highlighted the complementarity of regional instruments and generally-accepted standards and encouraged contact between regional bodies and the United Nations. Her organization had for quite a long time maintained relations with the Inter-American Commission on Human Rights and appreciated its value, for it had not only originated the draft convention on involuntary disappearances that had been submitted to the General Assembly of the Organization of American States, but also indicated in a resolution that a law promulgated in Uruguay constituted a negation of the right to justice.

48. She deplored once again, just like the representatives of other non-governmental organizations, the fact that the Commission on Human Rights functioned only during the six weeks of its session and that its Chairman as well as its main officers possessed only symbolic functions. She hoped that national bodies for the promotion and protection of human rights would perform the tasks that had been entrusted to them, that States Members of the United Nations and regional organizations would take practical follow-up action on the commitments they had assumed under the agreements and covenants to which they were party, and that machinery would be created to ensure that the Commission's activities continued beyond its annual session.

49. Mr. ADOSSAMA (World Association for the School as an Instrument of Peace) said that the role of his Association, namely, instruction in human rights and peace, fell under the heading of education which was recognized in several instruments and above all in the Universal Declaration of Human Rights. Human rights teaching was a long-term process which began in primary school, continued throughout a child's education and should leave an imprint on his behaviour and mentality throughout his life.

50. First of all, such instruction must focus on the main texts adopted by the United Nations and UNESCO as well as on their application and the extent to which they could be applied. He wondered in that connection in how many States Members of the United Nations such instruction was provided and how many citizens in each of those countries were familiar with their rights, since no one was supposed to be ignorant of the law. For that reason, human rights instruction should be included in all curricula so that the younger generation could grow up in a spirit of mutual understanding and tolerance which were guarantees of peace. Human rights instruction should make future citizens aware not only of their rights but also of peaceful methods - such as dialogue and negotiation - of settling their disputes and putting an end to unjust situations in which they might find themselves.

51. In order to attain those objectives, his Association was trying to train trainers at the national and international levels, since the role played by teachers in the training of enlightened citizens and in apprenticeship for democracy had been demonstrated. In 1984, it had therefore founded the International Training Centre for Instruction in Human Rights and Peace, whose activities were aimed at teachers in all categories.

52. His Association recommended that the Commission should request that human rights teaching should be made official in all schools throughout the world in accordance with General Assembly resolution 217 (III) adopted on 10 December 1948, request ministers of education to allow their teachers to take human rights instruction courses through the International Training Centre for Instruction in Human Rights and Peace, and to ensure that the Voluntary Fund for Technical Cooperation in the Field of Human Rights was used to grant fellowships to interested teachers and staff members of national ministries of education.

53. Mrs. BLOCH (Minority Rights Group) condemned what might be called a somewhat passive attitude on the part of the United Nations, or rather of its States Members, who invoked the principle of non-interference in internal affairs for political reasons, forgetting that the Charter of the United Nations began with the words "We, the peoples of the United Nations". Her Group believed that human suffering had to be addressed no matter where it occurred and that, in the case of violent conflicts every effort should be made to establish a dialogue between all the parties if possible. The result of failure to establish a dialogue of that nature in time was that the United Nations was now facing a major challenge in trying to repair the consequences of the cold war between the super-Powers, namely, civil war, human suffering and refugees.

54. The new approach to human rights that should be adopted by the Commission demanded respect for human rights rather than the protection of violators for geopolitical reasons. Among the many conflicts brought about by super-Power rivalry that were being forgotten by the outside world were those that were continuing in Afghanistan and Somalia. In Somalia, the persecution of certain clans under General Barre and uncontrolled mass violence in the south since his overthrow, had resulted in thousands of deaths and hundreds of thousands of refugees and displaced persons. It faced an extremely precarious future since endemic conflict was continuing, and humanitarian aid was delayed or non-existent because of insecurity. The population faced famine, and the relatively stable northern region would shortly be unable to absorb the influx of refugees. United Nations action in Somalia had been unsuccessful because the Secretary-General needed the wholehearted support of the States members of the Commission on Human Rights and the Security Council to put maximum pressure on the parties to the conflict to reach a peaceful settlement. Yet the Charter provided the United Nations with moral and legal authority to prevent tyrants from hiding behind the word "sovereignty". Beyond a simple cease-fire there should be a clear framework and process for negotiation. Civilians must also be protected from clan militia, possibly by the creation of "corridors of tranquillity" policed by United Nations forces. Such corridors could be extended to provide a cross-country link, and used for the provision of emergency humanitarian aid.

55. In Afghanistan, where it was estimated that one million non-combatants had been killed and wounded, 250,000 persons disabled and 5 million had become refugees, the population yearned for a peaceful political settlement and there was an urgent need to make progress in that direction. The United Nations plan of October 1991 offered some elements for such a settlement, and the Secretary-General and States members of the Security Council should be encouraged to make implementation of the plan their highest priority. The conference bringing together representatives of the Kabul Government, the Mujahidin and other political groups must proceed. Other States, not previously involved in the conflict should offer their good offices and the States which had previously been involved should exert diplomatic and other forms of pressure on their allies and former allies to bring them to the conference table.

56. Both Afghanistan and Somalia consisted of minorities - ethnic minorities in Afghanistan and clan segmentation in Somalia. No political settlement was possible unless those minorities and the major political factions felt that they would have a fair share of power and resources. The Secretary-General's initiatives were commendable but the Commission on Human Rights should find new ways of resolving violent conflicts.

57. Mr. STROHAL (Austria), speaking in exercise of the right to reply, thanked all delegations and persons who had endorsed the idea of introducing the emergency intervention procedure proposed by his country. The observations and suggestions presented by a large number of delegations since the introduction of that proposal revealed the interest it had aroused. Informal consultations were continuing and Austria would submit to the Commission a new version of its proposal in which all the views expressed would be taken into account. He informed participants that his delegation had prepared a written text which was at their disposal.

58. Mr. ROA KOURI (Cuba), speaking in exercise of the right to reply, said that the statement made that very morning by Mr. Niehaus, Minister for Foreign Affairs of Costa Rica, revealed the extent to which he was unfamiliar with the entire Cuban participative system which was completely alien to him. In Cuba, the promotion of the dignity of man in every sense of the term had been the first and basic law of the Republic since the time of José Marti. The Cuban Government was a genuine Government of the people, by the people and for the people. Workers, peasants, students and intellectuals, and not representatives of élites or privileged minorities, participated in it from time to time on the basis of elections. In the sister Central American Republic, and despite its democratic tradition, a gulf separated those who had everything and those who had nothing. Such was not the case in Cuba. Cuba had a perception of democracy that was different from that of the Costa Rican Minister, who refused to admit that there could be forms of democracy and participation other than those with which he was familiar.

59. It was also inacceptable that Mr. Niehaus should have compared Cuba to Haiti, where a group of military men connected with Duvalier interests had overthrown the constitutional Government of President Aristide and was trying to remain in power by means of brutal repression which had sent thousands of Haitians fleeing by sea and where, since the beginning of the century, a military caste imposed by the United States was responsible for a reign of

terror. Mr. Niehaus had demonstrated reprehensible ignorance not only of the popular and democratic roots of the Cuban revolution, but also of Haiti's tragic history. He therefore resolutely rejected his statement.

60. He also deplored the Austrian representative's initiative in using his right of reply to express thanks for the support given to the idea of emergency intervention procedure, since in his view that initiative was misplaced.

61. Mr. SEZAKI (Japan), speaking in exercise of the right of reply, referring to the allegations made by the International Educational Development Inc. movement, said that the Japanese Government had admitted that the imperial Japanese army had participated in the events in question and that the Japanese Prime Minister had presented excuses and expressed the remorse of his country during his visit to the Republic of Korea in January. With respect to compensation for the persons in question, action had been brought to consider complaints by individuals. The Japanese Government was not yet in a position to say any more at the present stage.

62. The CHAIRMAN declared the general discussion on agenda item 11 closed.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES, INCLUDING:

(a) QUESTION OF HUMAN RIGHTS IN CYPRUS

(b) SITUATION OF HUMAN RIGHTS IN OCCUPIED KUWAIT (agenda item 12) (continued) (E/CN.4/1992/3, 4, 25, 26, 27 and Corr.1, 28 and Add.1, 29, 32, 34, 35, 36, 37, 60 (S/23212), 64 and 67; E/CN.4/1992/NGO/2, 5, 10, 13, 19 and 24; E/CN.4/1991/24, 27, 28, 29, 30, 31, 33 and Add.1, 34, 35 and 36; A/46/446, 529, 542, 544 and Corr.1, 606 and 647);

(c) SITUATION OF HUMAN RIGHTS IN VARIOUS COUNTRIES

63. The CHAIRMAN invited Mr. Kälin, Special Rapporteur on the situation of human rights in occupied Kuwait to introduce his report (E/CN.4/1992/26).

64. Mr.KÄLIN (Special Rapporteur on the situation of human rights in occupied Kuwait) said that he visited Kuwait twice, from 12 to 20 June 1991 and from 1 to 6 September; on both occasions he received complete cooperation from the Government of Kuwait which had allowed him to carry out his work with the fullest degree of independence. He had thus been able to interview a large number of persons reported to be victims or eyewitnesses of violations of civil and political rights committed by Iraqi occupying forces, and had witnessed some of the material destruction attributed to the Iraqi forces relevant to the assessment of alleged violations of economic, social and cultural rights of Kuwaiti citizens. He had prepared his report on the basis of information communicated to him at his request by the Kuwaiti Government, specialized agencies and intergovernmental and non-governmental organizations, as well as unsolicited information provided by the diplomatic community and communications submitted by the Government of Iraq to various United Nations bodies as well as relevant Iraqi legislation. He had sent advance copies of

his report to the Iraqi Government but it had not been possible to incorporate its observations in the final report; they were therefore available in a separate document (E/CN.4/1992/64). The Iraqi Government had not, however, provided information on the fate of persons still missing who had allegedly been arrested by Iraqi forces during the occupation of Kuwait. The report provided a detailed account of the situation as regards the civil and political, economic, social and cultural rights of persons in Kuwait during the invasion and occupation by Iraqi forces, as well as the methods he had used to evaluate the violations that had been committed. The last section, which contained his conclusions and recommendations, also took up certain questions concerning compensation of the victims of those violations and restitution of their property.

65. He had reached the conclusion that over 4,200 prisoners of war (in the sense of the Third Geneva Convention) as well as several thousand civilians, both Kuwaiti citizens and citizens of other Arab States, had been arrested and in many cases detained for long periods or even - in some cases - deported to Iraq. Such mass arrests had not been justified in most cases even from the military standpoint and, like the deportation of civilians, constituted a violation of the provisions of the Fourth Geneva Convention. In addition, citizens of OECD countries had been deported to Iraq where they had been used as human shields at strategic sites, and diplomatic and consular staff of several countries had been confined to the compounds of their embassies in violation of the basic principles of international law. Available information also revealed that torture had been used systematically and on a wide scale during the interrogation of those arrested throughout the occupation. It took various forms and was particularly brutal in the case of persons suspected of belonging to the Kuwaiti resistance and included electroshocks, burning, mutilation, mock executions and, for women in particular but also sometimes in the case of men, rape. With respect to the right to life, there was ample evidence of widespread arbitrary and summary executions. Generally speaking, the persons executed had not been tried or had been tried in summary fashion, and had therefore not had a fair trial in accordance with applicable standards. Many executions had been carried out in public or in front of families of the victims and dead bodies had been exposed in public in order to spread terror among the civilian population (paras. 244 and 245 of the report). The persons arrested and in some cases deported to Iraq included women but also children, some of whom witnessed traumatic events such as the arrest or disappearance of close relatives or the sight of executed persons lying in the street. The right to health of Kuwaitis had been seriously curtailed during the Iraqi occupation by a severe reduction of health-care services during that period and the closing, pillage or destruction of hospitals and laboratories and the departure of health professionals as a result of acts of intimidation by Iraqi occupying forces; that had resulted in a sharp increase in mortality in health-care institutions.

66. The problem of missing persons deserved special attention. Iraq had so far failed to provide any information about persons arrested and deported who had not yet been repatriated, and had not reported cases of death occurring in detention or of persons sentenced to death, as required by the Third and Fourth Geneva Conventions. He recommended that a case-by-case approach should be adopted to the problem of missing persons in cooperation with competent United Nations bodies, the International Committee of the Red Cross (ICRC) and

the Governments of Kuwait and Iraq. In that connection he welcomed the efforts of the Kuwaiti Government to re-examine its list of missing persons and hoped that the Iraqi Government would also contribute to the solution of the problem. Specifically, he urged that Government to provide information on all persons who had been arrested and deported between 2 August 1990 and 26 February 1991 and who were still missing, as well as on all other persons who had died in detention and who had been executed. He also urged the Iraqi Government to release all persons who were detained in Iraq and allow their repatriation and invited it to search, in a humanitarian spirit, for missing persons whose fate was unknown in cooperation with international humanitarian organizations such as ICRC. Lastly, he invited the Kuwaiti Government to take all appropriate steps and to cooperate with international organizations in identifying the corpses of all persons killed in Kuwait in order to clarify cases of missing persons for their relatives.

67. With regard to compensation, he said he had received large numbers of claims for compensation either for material damages or personal injuries which he had transmitted to the Compensation Commission established under Security Council resolution 687 (1991) on 3 April 1991. In that regard he welcomed the decision taken on 18 October 1991 by the Governing Council of the United Nations Compensation Commission (S/AC.26/1991/3) to compensate victims of human rights violations for personal injury as well as for serious mental pain and anguish. He also urged United Nations bodies and other intergovernmental organizations to consider means of presenting the claims of persons who were stateless or without the effective diplomatic protection of a State, namely, Palestinians. In that connection he expressed the hope that the decision recently adopted by the Governing Council of the Compensation Commission (S/AC.26/1991/5) to the effect that an appropriate person, in cooperation with international bodies such as UNHCR, UNRWA and ICRC, should be entrusted with the task of ensuring that such persons were compensated.

68. The CHAIRMAN invited Mr. Rivas Posada, Special Representative of the Commission responsible for studying the human rights situation in Cuba, to introduce his report (E/CN.4/1992/27).

69. Mr. RIVAS POSADA (Special Representative of the Commission responsible for studying the human rights situation in Cuba) said that the task entrusted to him was described in resolution 1991/68 adopted by the Commission on Human Rights on 6 March 1991. After having been officially appointed by the Secretary-General to perform that task, he had on 30 July 1991 sent a letter to the Cuban Government informing it of his mission and requesting it to provide him with all necessary cooperation in the fulfilment of his mandate. As that letter had remained unanswered, he had on 2 December 1991 sent a further communication to the Cuban Government, once again requesting its cooperation and authorization to visit Cuba; he had subsequently transmitted to it a list of persons who, according to information received, might have been victims of human rights violations. As none of those communications had been answered, he had been unable to establish direct contact with the Cuban authorities and receive information from them.

70. He explained that resolution 1991/68, which described his mandate, had been adopted as a result of a process initiated by the Commission at its forty-fourth session, when it had instructed its Chairman and five of its

members to visit Cuba in order to observe the human rights situation; the various stages of that process were described in detail in paragraphs 8-14 of his report. Under that resolution, his task consisted essentially of maintaining direct contact with the Cuban Government and establishing direct contact with "citizens of Cuba". Since it had been impossible to do so because he had been unable to visit Cuba, he had decided to collect information from Cuban citizens living outside their country, either directly or through representative organizations. The information included in the report therefore comprised such information as well as that which Cubans had sent from Cuba itself.

71. He regretted the fact that his work had of necessity been confined to the compilation of information presented in that way without being able to determine whether the allegations made were justified, since the complete absence of information from Government sources had made it impossible to compare the complaints submitted to him with the version of the Cuban authorities and to evaluate them on the basis of a more comprehensive knowledge of the facts. He had nevertheless considered that those allegations should be brought to the attention of the international community in an objective way and unaccompanied by any value judgements. As indicated in paragraph 26 of the report, some of the individual cases involving such complaints might well have been clarified by the Cuban Government in its replies transmitted to the Sub-Commission in accordance with the confidential procedure; for that reason, any such replies could not be made public. He emphasized in that connection that the Cuban Government had so far duly replied to communications that the Centre for Human Rights transmitted to it under that procedure.

72. The information he had received revealed that there had been a considerable decline in the number of allegations concerning the right freely to enter and leave the country compared with the number of complaints recorded by the Working Group that had visited Cuba in 1988 and mentioned in its report (E/CN.4/1989/46). Most of the allegations made during the previous two years concerned disappearances arising out of failed attempts to flee the country in conditions that put the lives of the emigrants at risk. The authorities now granted exit permits more easily but the conditions in which the voyage was undertaken were often extremely hazardous. On the other hand, the number of complaints concerning the alleged persecution of dissidents and opponents of the regime had increased considerably, as had communications indicating that detainees and in particular political prisoners, namely, those who were regarded as enemies of the regime, had been subjected to ill-treatment. Moreover, the human rights situation in Cuba should be viewed from the standpoint of the country's difficult economic situation because, as indicated in paragraph 30 of the report, all the efforts made by the Cuban Government to improve the exercise of economic, social and cultural rights had been seriously jeopardized by the political and economic changes which had taken place on the international level and which had forced it to modify its relations with the countries with which it maintained close political economic and trade links. The result had been a serious deterioration of the Cuban economy to which the authorities had reacted by intensifying the repression of alleged opponents of the regime. That had in 1991 given rise to the creation of "flying squads" responsible for forestalling any attempt at public protest, to which was attributed responsibility for the "acts of repudiation" which

were tolerated by the authorities and during which dissidents and alleged militants were harassed, insulted and aggressed. It had been during a demonstration of that nature that the house of the writer María Elena Cruz Varela, accused of "unlawful association" and sentenced to two years' imprisonment, had been attacked. That incident and other abuses reported by the press, such as the recent sentencing to death of persons who had tried to leave the country illegally - police officers having been killed during their attempt to do so - revealed that freedom of expression, of participation in political life and association were considerably restricted in Cuba.

73. In conclusion, he expressed the hope that the Commission and other competent United Nations bodies would be able in future to get the Cuban Government to cooperate in order to clarify the cases and questions he had mentioned. For the Commission's task was not to denounce or condemn countries but rather to help them respect human rights; without their cooperation it would be unable to perform its task properly.

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Forty-eighth session

SUMMARY RECORD OF THE 34th MEETING
(SECOND PART*)

Held at the Palais des Nations, Geneva,
on Wednesday, 19 February 1992, at 3 p.m.

Chairman: Mr. SOLT (Hungary)
later: Mr. NASSERI (Islamic Republic of Iran)

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Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission:

(a) Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms;

* The summary record of the first part of the meeting appears as document E/CN.4/1992/SR.34.

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(a) Question of human rights in Cyprus;

(b) Situation of human rights in occupied Kuwait (continued).

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES, INCLUDING:

(a) QUESTION OF HUMAN RIGHTS IN CYPRUS

(b) SITUATION OF HUMAN RIGHTS IN OCCUPIED KUWAIT

(agenda item 12) (continued) (E/CN.4/1992/3, 4, 25, 26, 27 and Corr.1, 28 and Add.1, 29, 30, 32, 34-37, 60, 64 and 67; E/CN.4/1992/NGO/2, 5, 10, 13, 19 and 24; E/CN.4/1991/24, 27-31, 33 and Add.1, and 34-36; A/46/446, 529, 542, 544 and Corr.1, 606 and 647)

1. Mr. ROA KOURI (Cuba) said that the previous year his delegation had announced to the Commission that it would not comply with the provisions of resolution 1991/68, imposed by a slender majority comprising the United States, its allies and countries acting under pressure. For its part, his delegation had supported a draft resolution sponsored by various Latin American and non-aligned States which, in accordance with the view expressed by the Secretary-General in his 1991 report to the Commission, recommended the continuation of contacts between the Secretary-General and the Government of Cuba.

2. His delegation could not accept the appointment of a Special Representative to conduct an investigation, an action that the Commission took only when there was a consistent pattern of gross and massive violations of human rights. By no stretch of the imagination could such a state of affairs be said to exist in Cuba. The Special Representative's mandate was devoid of political and moral validity. For that reason, Cuba had not responded to his communications or extended him its cooperation. As a State which scrupulously fulfilled all its obligations as a Member of the United Nations, Cuba had no obligation to comply with demands diverging from the Commission's normal practice.

3. The report by the so-called "Special Representative" on the human rights situation in Cuba posed a curious paradox. At the outset, it conceded that, because the Representative had been unable to visit Cuba and interview Cuban citizens in their own country or to check the allegations made by private individuals and organizations against the authorities' version, part of the necessary material was mission, a fact that inevitably weakened the report and made it difficult to arrive at objective and impartial conclusions. Consequently, the Special Representative proposed to include the information supplied to him in his report, "in an objective manner and without making value judgements".

4. Yet chapter V of the report, entitled "Final remarks", not only contained value judgements, but also offered conclusions regarding the human rights situation in Cuba, and also the country's economic, social and political situation. In the light of the comments made by the Special Representative, how were the judgements and conclusions contained in the report to be interpreted? Could they be regarded as objective and impartial? Or were they tainted by the fact that, as Mr. Rivas Posada had conceded at the outset, part of the necessary material was missing?

5. The report, unlike those presented to the Commission in 1988 by Ambassador Sene and in 1991 by the Secretary-General, accepted as true statements made by individuals not living in Cuba and by organizations that had not visited it. The informants included persons who had been imprisoned in Cuba for sheltering a murderer and attempting to infiltrate CIA agents, as well as organizations offering false credentials, and others that were receiving funds from the National Endowment for Democracy, an organization which served as a front for financing defamatory campaigns against Governments regarded by the United States as "hostile", and which in 1991-1992 alone had earmarked $600,000 for anti-Cuban propaganda.

6. All the private organizations referred to in the report were noted for their hostility to the Cuban revolution, while organizations like the International Association against Torture, which had given Cuba a clean bill of health in its report to the Commission, had not even been consulted.

7. The alleged defenders of human rights who had submitted the information to which the Special Representative referred actually consisted of 21 small entities, five of which comprised a single person and 10 of which had fewer than 10 members - a total of 374 individuals who sought a return to the semi-colonial republic that had been swept away for ever on 1 January 1959.

8. The report also referred to alleged reprisals against persons who had contacted Ambassador Sene's mission in 1988. In his 1991 report, the Secretary-General had declared that issue satisfactorily resolved, having received communications on the matter from the Cuban Minister for Foreign Affairs. The existence of any such reprisals had been categorically denied on various occasions. It had, however, been made clear that persons who had contacted the Commission's mission in 1988 could not claim impunity if they broke the law, merely because they had been in contact with the mission or the secretariat.

9. Paragraph 25 of the report referred to a note sent to the Government of Cuba on 29 August 1988, containing a series of questions concerning certain constitutional and legal matters and included in annex XVI to the mission's 1988 report, to which answers by his Government had been requested. In spite of the unusual nature of the request, the Cuban authorities had agreed to provide further information on Cuba's Constitution and laws. Yet it was entirely unreasonable to require Cuba to subject its Constitution, which had been adopted in a referendum by secret ballot by a majority of over 97 per cent of citizens over the age of 16, to international scrutiny. That was a matter for the Cuban people alone. The National Assembly of People's Power was indeed currently drafting various amendments to the Constitution, to be discussed at its forthcoming session.

10. Another question tackled by the Special Representative was migration. The report acknowledged that there had been a considerable fall in the number of complaints concerning the right freely to enter and leave the country, but added that the "lack of an established emigration system" and the "limits imposed by certain countries on the granting of visas" had led to an increase in the number of people leaving the country illegally. He reminded the Special Representative that a 1990 amendment to the Migration Act established the right of any person over the age of 18 freely to leave and enter the

national territory. Needless to say, in order to do so it was necessary to be in possession of a foreign visa and of resources which, in the current circumstances, the State could provide only in cases of urgent medical need and in other cases of a humanitarian nature. In actual fact, the cause of the increase in illegal departures was the difficulty in obtaining United States visas (including visas for former counter-revolutionary prisoners and their families, who were accorded priority under the Cuban-United States migration agreement), in view of the preference accorded by the 1990 United States Immigration Act to professionals and foreigners with exceptional skills. Besides, it was well known that any person leaving the country illegally, even a thief or murderer, was welcome in the United States, regardless of immigration requirements, as a "political refugee".

11. The report's bias was even more evident in its recourse to the most aggressive assertions made by the current anti-Cuban campaign. Allegations and complaints which had not been contradicted purely because his delegation did not recognize the Special Representative's mandate were elevated to the status of truths meriting the attention of the international community - although it was acknowledged that some individual cases might have been explained by the Government of Cuba in its replies to the Sub-Commission. The Special Representative had had access to all the information provided by Cuba under the confidential procedure laid down in Economic and Social Council resolution 1503 (XLVIII). On the other hand, the non-confidential material provided by his Government to the Special Rapporteurs of the Commission and to the Chairman of the Working Group included details of all the cases referred to the Special Representative by his informants. His delegation had circulated a copy of its communications to members of the Latin American Group, and hoped that the secretariat would distribute them once they had been examined by their addressees. They contained explanations concerning all the false allegations made.

12. The Special Representative did not explain what had led him to conclude that "frequent" abuses were committed against the prison population, particularly "those detained for political reasons". Apart from the fact that no one was detained for such reasons, but only for specific breaches of the law, it should be noted that neither Ambassador Sene's mission nor participants in the congress on crime held recently in Havana had found any evidence of such abuses. Still less were there grounds for "serious fears" that psychiatric treatment for alleged offenders was being "improperly or illegally used". The latter accusation was particularly insidious in the light of the high standard of Cuba's health service, unequalled anywhere in the third world, and its doctors' high professional and ethical standards.

13. His delegation categorically rejected the allegation that there were no guarantees relating to the exercise of the rights of political participation, expression and association for those who criticized the authorities without resorting to violence. The debate at the Fourth Congress of the Communist Party of Cuba, which had included adverse criticism of various aspects of national life, proved that the reverse was true. However, criticism and disagreements as to methods should not be confused with calls to overthrow the revolution, collaboration with exiles in the service of the United States or incitement to break the law emanating from the CIA and some foreign embassies.

14. The people's role in determining its future was constantly increasing. Cuba was not the kind of democracy in which it was necessary to spend millions of dollars in order to be elected, or in which 35 per cent of citizens with the right to vote elected supposedly "representative" rulers. The representatives of people's power were elected in the constituencies, by direct and secret ballot, by more than 90 per cent of enfranchised citizens. As from 1992, not only municipal delegates, but also provincial delegates and members of the National Assembly would be elected in that way.

15. Cuba was facing a difficult situation as a result of the illegal economic, financial and trade blockade imposed by the United States and the drastic reduction in aid from the former Soviet Union. Nevertheless, it was rash to attribute to the Cuban authorities the decision to react to that situation with increased repression targeted on alleged opponents of the regime. In actual fact, Cuba had decided to respond to those difficulties with harder work, greater austerity, savings and creativity, encouragement of new programmes, development of tourism, import substitution, a broadening of non-traditional exports and a search for new markets. Those measures were an attempt to preserve as much as possible of the revolution's economic and social achievements, which had made the Cuban people's quality of life so different from that of any other country of the South. In Cuba no citizen would ever be destitute, irrespective of present and future difficulties.

16. Only by the broadest stretch of the imagination could the Special Representative's conclusions be described as "objective and impartial". The Commission's session was being attended by representatives of countries whose forces of law and order were engaged in daily and sometimes murderous suppression of protests against the high cost of living, unemployment and so-called structural adjustment measures; where paramilitary forces routinely murdered or abducted street children, beggars and drug addicts; where the army applied a scorched-earth policy against peasants and indigenous people defending their legitimate rights; or where chauvinistic and racist elements attacked third-world immigrants, destroyed their homes and indulged in neo-fascist activities. Furthermore, the members of the Commission included the United States, a country that had invaded Panama, fomented the dirty war against Nicaragua, supported Governments which, unlike his own, had violated the whole range of human rights in Central and South America, while the Commission had not raised a finger to propose the appointment of a special rapporteur or representative or even requested the most tentative investigation of those crimes and practices. Was it, then, reasonable, just and desirable to request the Commission to monitor the human rights situation in Cuba, which had, on its own initiative, invited a mission of the Commission to observe the situation on the spot in 1988, and which continued to cooperate with the Secretary-General and representatives and organs of the Commission, including the Centre for Human Rights; the only third-world country that had managed to achieve an egalitarian society; a country which as Mr. Robert McNamara, former Pentagon Chief and former President of the World Bank had recently affirmed, had done more for the health of its people than the powerful United States did for its own citizens?

17. What yardstick was the Commission applying? A lenient one for the friends of the only remaining super-Power, and an inflexible one for those who dared to be independent and insubordinate? The Cuban revolution was not up for judgement in the present forum. His delegation would reject any attempt to discriminate against it. It would continue to cooperate with the Secretary-General, the Centre for Human Rights and other United Nations mechanisms, in fulfilment of its international undertakings, and on terms identical to those applicable to other Member States. But it would also continue to denounce the illegitimacy of any decision imposed by the United States on the international community in its irrational political vendetta against Cuba. Although its national dignity was also at stake, the issue was not just one of safeguarding its people's human rights, won after a century of epic struggle, but also its independence and sovereignty, its right to full freedom in determining its own destiny. Those who were attacking it now hankered after the dependent Cuba of the past, and wished to see it restored to its former status as a banana republic. The proponents of the Cuban revolution would know how to defend their gains, freedom and independence. They were not suicidal fanatics. They loved life above all else, had struggled and would continue to struggle to make it more beautiful and just. Not for them the path of retreat and submission, or "flexibility", as some liked to call it: they would never abandon their struggle to be free, sovereign, socialist and independent.

18. Mr. ANSARI (Pakistan) said that, despite the success of the efforts made by United Nations bodies and non-governmental organizations, human rights continued to be trampled on in some parts of the world. He wished to draw the Commission's attention to the gross violations of human rights taking place in Indian-occupied Kashmir, which, ironically, were being perpetrated by the security forces of the country that claimed to be the world's largest democracy.

19. Kashmir had been under siege since January 1990, when Indian security forces had launched a bloody crackdown to suppress the Kashmiri movement for self-determination. Since then, massive violations of human rights had been a daily occurrence. Dusk-to-dawn curfews were imposed on entire cities; indiscriminate killings, mass arrests, women raped in front of their families, looting and arson had become a routine affair. Tens of thousands of Kashmiris had lost their lives, while others were subjected to degrading questioning, searches and beatings. There was an acute shortage of basic necessities and essential services, and no medicines were available. Physical evidence of the abuses by security forces was visible throughout the territory. Yet that repression had not daunted the people of Jammu and Kashmir in their legitimate aspiration to achieve self-determination. On the contrary, the struggle had intensified.

20. Those human rights violations had been well documented by international journalists and by human rights organizations, including organizations in India. Four Indian human rights organizations, the People's Union for Civil Liberties (PUCL), Citizens for Democracy, the Radical Humanist Association and the Manav Ekta Abhiyan had appointed an eight-member team to assess the situation in Indian-held Kashmir. The group had visited Kashmir in 1990, and its report testified to the human rights violations committed by Indian

security forces. In March 1990, the Committee for Initiative on Kashmir, a New Delhi-based human rights body, had published a report on State repression in Kashmir, highlighting atrocities perpetrated by the security forces and focusing attention on the role of Jagmohan, the former State Governor, in terrorizing the population. A seven-member team of the Indian People's Front had also visited the Kashmir Valley from 17 to 22 June 1990, and on its return had published revelations of human rights violations by security forces in the territory.

21. Turning to international coverage, he drew attention to the fact that India had banned foreign journalists and humanitarian organizations from entering the territory of Jammu and Kashmir. Nevertheless, some international journalists and human rights activists had managed to slip through and had returned with tales of terror which had been reported in the international press. Two volumes of extracts from those reports had been published, and were available for reference.

22. Further reports by independent journalists and human rights activists revealed continuing gross violations of human rights. Barbara Crossette, the Asia correspondent of The New York Times, had cited the United States Amnesty International chief as identifying India as a country that violated human rights with impunity. She herself had visited Indian-occupied Kashmir, and confirmed that the use of force by the occupying forces had totally alienated the Kashmiris from India. Lord Avebury, Chairman of the Human Rights Committee of the United Kingdom Parliament, had observed that the question of Kashmir was one of unfinished decolonization and should be brought before the General Assembly. Amnesty International's 1990 and 1991 reports had dealt at length with the situation in Kashmir, alleging widespread torture and rape by members of the security forces, especially during house-to-house searches. The 28 January 1992 issue of Le Monde contained an article on "the forgotten bloodbath in Kashmir", detailing the miserable plight of the Kashmiri people.

23. The Indian authorities were refusing to recognize the underlying realities of the situation in Jammu and Kashmir, which they were presenting as a law-and-order problem created by the assistance afforded to the Kashmiri people by Pakistan. That was a blatant lie. Everyone knew that India had unleashed a reign of terror in Kashmir so as to suppress the legitimate demand of the Kashmiris for self-determination and prevent the holding of a United Nations-sponsored plebiscite as provided for in the resolutions of the Security Council. History proved, however, that no nation could successfully subjugate another nation, as was evidenced by the recent developments in Eastern Europe and Central Asia.

24. The people of Kashmir were calling upon the international community, and in particular the Commission, for help. The Commission must send a fact-finding mission to ascertain the true situation in the territory. For its part, Pakistan sought amity and understanding with India, which was in the interest of both parties. It had spared no effort to promote normalization of relations between the two countries. But at the same time, it could not refrain from protesting at the gross violation of human rights in Kashmir. Furthermore, it was a party to the Kashmir problem, as had been recognized by the Security Council.

25. Time did not permit him to comment on the many other issues to be considered under item 12. With regard to Cyprus, however, his delegation took the view that a solution to the Cyprus question could be achieved through talks between the Greek and Turkish Cypriot communities on the basis of equality. Pakistan supported Security Council resolution 649 (1990) on that issue.

26. Mr. BLACKWELL (United States of America), echoing words of the United States poet, Robert Frost, said that a nation which disdained the importance of human rights had nothing to look backward to with pride and nothing to look forward to with hope. Commitment to the principles enshrined in the Universal Declaration established a nation's essential civilization, and its claim to the allegiance of its citizens.

27. In the view of his country, such individual rights as freedom of speech and of religion came not from the generosity of the State, but from the hand of God. Respect for those rights did justice not only to the innate desire of humankind to control its own spiritual destiny, but also the drive to grow and prosper. Human rights were indeed a precondition of development, as well as of individual expression.

28. Whenever the rights of any were denied, the rights of all were threatened. Individuals as well as nations bore responsibility for vigilance in that respect; and the Commission must do more than unveil the dark secrets that some countries would prefer to hide: it must seek out the most serious violators of human rights and call them to account.

29. Abuses persisted in some parts of the world, but a number of significant achievements and positive trends were also to be noted. For example, Argentina had made major strides in restoring democracy and liberty and promoting economic development, and the process of reconciliation was well under way in Chile, where a democratic Government was in place.

30. Over the past year, sweeping changes had occurred in Russia, Ukraine, Belarus and the other republics formerly forming part of the Soviet Union. Those events - like the previous transformations in Hungary, Poland, Czechoslovakia, Bulgaria, Romania and Albania - augured well for human rights and fundamental freedoms. His country stood ready to provide whatever advice or technical assistance they might request.

31. Significant democratic trends had been noted in Benin and Zambia and his Government hoped that continued improvements in respect for human rights would take place there as well.

32. Angola, Ethiopia and El Salvador were emerging from extended periods of intense civil war. There was reason for substantial optimism and his country looked forward to improved respect for human rights in the years to come.

33. He regretted that in other areas of the world there were reasons for concern. On 29 January 1992, he had outlined his country's views on the violation of human rights in the occupied Arab territories, including Palestine, and highlighted its hopes for a comprehensive and enduring peace in

the region, together with the belief that respect for the human rights of all individuals was important for its own sake and would make a positive contribution to the negotiations.

34. On 3 February 1992, he had spoken of the need to continue the irreversible process of sweeping changes in South Africa in order to complete the total dismantling of apartheid and correct other human right problems.

35. In Haiti, a democratically elected Government had been overthrown by a military mutiny on 29 September 1991. Constitutional order had not yet been restored, despite the urgings of the General Assembly and active negotiations by the Organization of American States. Arbitrary arrest and detention continued to be among the most persistent human rights violations in Haiti.

36. In the Sudan, the ongoing civil war had produced many civilian casualties and been associated with Government repression of the freedoms of speech, press and assembly and political choice. Government authorities had resorted to arbitrary arrest, detention without charge, and unfair trials of civilians in military courts.

37. The cold war had ended, but the civil conflict in Afghanistan remained unresolved. Five million Afghans had become refugees, primarily in Pakistan and Iran; another 1 million had been displaced within the country. Despite some largely cosmetic reforms in the legislation, the regime continued to restrict virtually all the main categories of human rights.

38. The citizens of Zaire continued to be subjected to arbitrary detention and physical mistreatment.

39. The United States welcomed the decision of the Government of Indonesia to investigate the 12 November incident in East Timor. It noted that the Indonesian Government had committed itself to imposing appropriate disciplinary measures on security personnel who had used excessive force and that it had promised to take steps to prevent a recurrence of such incidents.

40. In the context of recent hostilities in Yugoslavia, the various combatants appeared to have carried out many atrocities and other violations of human rights and fundamental freedoms. His delegation supported the ongoing efforts of the United Nations and the European Community to bring about a peaceful solution.

41. The Government of Cuba had flouted the will of the international community by refusing to cooperate with the Secretary-General's Special Representative. That Government sharply restricted all basic human rights, including the rights to freedom of expression, association, assembly and movement as well as the right of citizens to change their Government. As recently as November 1991, the Cuban authorities had unleashed a wave of repression against human rights activists, a condition that the international community could not tolerate.

42. The Iraqi regime had continued its systematic violation of virtually all categories of human rights, and political killings remained pervasive. The execution of perceived opponents had been particularly notable the previous spring, during the efforts of Iraqi military and security services to suppress the popular uprising in the south and the north.

43. There was also no doubt that serious violations of human rights persisted in Iran, but the Government made an intense effort to conceal its real record of abuses and to persuade the international community that the situation had improved. His delegation had no reason to believe that; there was much evidence to the contrary.

44. In the Democratic People's Republic of Korea, the security apparatus was arbitrary and harsh, and human rights violations were routine.

45. In China, more than 1 billion people lived under a Government that continued to punish its citizens for the non-violent expression of their political and religious beliefs. Two years after the suppression in Tiananmen Square, hundreds of people remained in prison and re-education camps for daring to assemble in a public place to support democracy and personal freedom. The trials that had taken place had ignored the right of due process stipulated in the Chinese Constitution. His delegation called on the Chinese leadership to free those brave individuals who had demonstrated peacefully for their beliefs.

46. In Myanmar, the ruling military dictatorship had continued to negate the right of the people to change their Government by failing to implement the results of the 1990 elections. Torture, arbitrary detention and compulsory labour were examples of the brutal repression of human rights that existed in Myanmar. In resolution 46/132, the General Assembly had expressed concern about the grave human rights situation in that country and the need for an early improvement. His delegation was convinced that the Commission should do likewise and take strong and effective action on behalf of the people of Myanmar.

47. Despite the abuses he had described, it was his Government's firm conviction that freedom was advancing all over the globe and that a new age was dawning in which democracy and human rights would predominate. However, the Commission should exercise caution because despite the growth of democracy and liberty, there would always be a struggle against those who would subvert democracy whether from the right or the left. For those fortunate enough to live in democracies, there would always be a challenge to maintain and nourish the liberties they enjoyed.

48. Mr. Nasseri (Islamic Republic of Iran) took the Chair.

49. Mr. AL-SABAH (Observer for Kuwait) said that one year previously Kuwait had been occupied by Iraqi forces while the Government had been forced into exile and the Kuwaiti people dispersed within the country and abroad. At that time, he had appealed to the Commission to press the Iraqi authorities to stop violating human rights and fundamental freedoms in his country. The Commission had adopted a resolution denouncing the Iraqi violations and had appointed a Special Rapporteur to investigate the human rights violations committed in occupied Kuwait.

50. On 26 February 1991, Kuwait had been freed from the Iraqi enemy; the Kuwaiti people had returned to their homeland and the official Government had regained the reins of power. The world had witnessed the great physical and psychological harm inflicted on the Kuwaiti people and the damage done to the country's general infrastucture.

51. It was clear from the report of the Special Rapporteur (E/CN.4/1992/26) that the violation of human rights in Kuwait under Iraqi occupation had been a deliberate and consistent policy followed by the Iraqi authorities. Those responsible had had a long experience in violating human rights and the Iraqi authorities had practised those violations against the Iraqi people prior to inflicting them on the Kuwaiti people. In that connection, he referred to the statement in paragraph 140 of the report to the effect that "Reports and other information available to the Special Rapporteur demonstrate a pattern of deliberate and grave violations of the right to life". The Special Rapporteur added, in paragraph 184, that Iraq might have violated its obligation, under article 27 of the Fourth Geneva Convention to protect women "against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault". In paragraphs 180 and 200 of his report, the Special Rapporteur drew attention to other serious human rights violations committed by the Iraqi occupying forces.

52. During the occupation, Iraqi forces had subjected the Kuwaiti people to all kinds of oppression and terrorism. A new type of abuse practised during the last days of occupation was environmental terrorism, whereby the occupation forces had ignited and demolished Kuwaiti oil wells, polluted the Gulf waters with oil and planted mines.

53. Kuwait was proud to report at the present time that the fires in 730 wells had quickly been extinguished. However, there were still millions of mines and unexploded ordinance spread throughout Kuwait, which represented a dangerous threat to the environment and a source of ongoing suffering for the Kuwaiti people.

54. Iraq was internationally responsible for the violations of human rights and the damage inflicted on Kuwait during the occupation and his Government therefore strongly supported the Special Rapporteur's recommendation that all States concerned should conduct proceedings against individuals responsible for grave breaches of humanitarian norms by the Iraqi occupying forces.

55. Following the liberation of Kuwait, Kuwaiti forces, with the assistance of the international allied forces, had entered their homeland together with observers for humanitarian organizations, such as the International Committee of the Red Cross (ICRC), and a great number of journalists. They had found an exhausted nation which the Iraqi enemy had tried to humiliate. The world had watched as the Kuwaiti people revealed their happiness and relief. Tears had expressed victory and happiness as families were reunited. As well as the desire for revenge from the enemy and its collaborators.

56. During the period immediately following liberation, isolated violations of human rights had been committed by individuals under severe psychological pressure. At the same time, Kuwaiti inspection points had been attacked by infiltrators planted by the Iraqi authorities and many Kuwaiti security

personnel had died. At that time, the official Government had not been in a position to master the situation. It was clear that the Iraqi authorities were directly responsible for all those events, since without the Iraqi invasion and occupation, security would have prevailed in a country known as a peaceful and stable one. Upon regaining power, the Kuwaiti Government had promised to punish all those who had collaborated with the Iraqi enemy according to Kuwaiti laws. The Kuwaiti system had dealt with the cases before it and had found some people innocent and others guilty. In an act of clemency, all death sentences handed down by courts had been commuted to life imprisonment. In that connection, he said that in countries where the death penalty was applicable, there had never been a period when collaborators who had helped to kill, torture and disperse the people had not been sentenced to death.

57. Kuwait had signed an agreement with ICRC under which the humanitarian organization would open a regional office in Kuwait City. Kuwait was dealing with all issues related to refugees and migrants with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Immigration. Censorship had been abolished in January 1992 in respect of such human rights as the freedom of opinion and expression, and free and fair parliamentary elections were to be held in October 1992.

58. The issue of Kuwaiti war prisoners, missing persons of third countries and those still detained in Iraqi prisons remained a challenge to the international community. The Security Council had repeatedly urged the Iraqi authorities to release those prisoners immediately and to implement the relevant articles of the Third and Fourth Geneva Conventions.

59. The Special Rapporteur had exerted great efforts to investigate the situation of prisoners and missing persons. It was clear from part IV of his report that the Iraqi authorities had violated human rights in areas mentioned in the International Covenant on Civil and Political Rights. Iraq had failed to inform families about the whereabouts of persons arrested in Kuwait or to give arrested persons the right to contact their families; to provide information about sentences imposed on prisoners of war and civilian detainees; and to issue death certificates for deceased prisoners of war and civilian internees.

60. In his report, the Special Rapporteur highlighted different methods of torture practised against prisoners during the period of occupation. While the Special Rapporteur had dealt with the torture issue within the limits of the information available to him, he had not reported on the situation of the prisoners of war and detainees in Iraqi prisons and camps, which the Kuwaiti delegation understood was beyond the scope of his mandate. However, it fell within the mandate of the Special Rapporteur on violations of human rights in Iraq.

61. The Kuwaiti people would never fully enjoy the liberation of their country until the prisoners held by Iraq and other missing persons returned to their homeland. The Iraqi authorities refused to recognize those prisoners and rejected collaboration with ICRC and the allied countries. No success had

been achieved from meetings with the representatives of the Iraqi authorities. It was to be hoped that pressure by the Commission on the Iraqi authorities would be effective.

62. Mr. AL-THANI (Observer for Qatar) said that at the beginning of the previous year, the world had hoped that Iraq would come to its senses and implement the Security Council resolutions calling on it to withdraw from Kuwait. The Qatari armed forces had had the honour of helping to liberate Kuwait and to put an end to the suffering of the Kuwaiti people.

63. In the light of the reports in the mass media concerning the aggression and inhuman acts committed by the Iraqi occupier, the Commission had adopted resolution 1991/67, in which it had requested the Chairman to appoint a Special Rapporteur with a mandate to examine the human rights violations committed in occupied Kuwait by the invading and occupying forces of Iraq. His delegation commended the Special Rapporteur on his report (E/CN.4/1992/26), which indicated that the invading Iraqi forces had flagrantly violated all international covenants and agreements.

64. The violations by the Iraqi aggressors had been committed against Kuwaitis and non-Kuwaitis alike. The Special Rapporteur stated in paragraph 100 of his report that he had received extensive information regarding torture and cruel, inhuman and degrading treatment by Iraqi occupying forces. He indicated in paragraph 143 that hundreds of persons had lost their lives as a consequence of executions and other actions of the Iraqi occupying forces inconsistent with the right to life protected by article 6 of the International Covenant on Civil and Political Rights and the corresponding guarantees under the law of armed conflict, including common article 3 of the four 1949 Geneva Conventions. However, the death toll might be considerably higher if the persons reportedly arrested by the Iraqi occupying forces included other victims of violations of the right to life.

65. Attention should also be drawn to the economic and social situation of the Kuwaitis under Iraqi occupation. In that connection, he referred to paragraph 188 of the report and said that, contrary to article 56 of the Fourth Geneva Convention, the Iraqi forces had sought to intimidate medical personnel of all categories and had dismantled medical and hospital establishments.

66. Referring to paragraph 224 of the report, he said that the Iraqi authorities had not respected their obligation under the Fourth Geneva Convention and had dismantled and pillaged public and private property.

67. A serious problem that remained to be dealt with was the question of missing persons. In that connection, he referred to the statement in paragraph 144 of the report that international practice and doctrine had categorized disappearances as a crime against humanity. Therefore, his delegation found it difficult to understand Iraq's refusal to provide information about those persons, particularly since many of them were known to have been deported to Iraq, where they had disappeared. Under international law, Iraq was bound to provide information about all Kuwaitis and

third-country nationals who had been arrested and transferred to Iraq and who were still alive so that they could return to their homes. Iraq was also bound to provide information on persons who had died while in detention during the occupation.

68. Ms. DILLER (International Human Rights Law Group) said that her organization was greatly encouraged by the significant efforts being made in a growing number of countries to protect and promote human rights. There were persistent and grave human rights conditions elsewhere, however, which required the Commission's careful attention and strong action. In Myanmar, the judicial and legal protection necessary to secure the right to life, liberty and security of person were either non-existent or severely compromised. Over the past year, the situation of human rights in Myanmar had worsened under the martial law rule of the State Law and Order Restoration Council (SLORC). Despite its assurances to the international community, that body refused to establish a schedule for relinquishing power to the duly elected civilian government and continued to stifle the call of citizens for representative government in central Burma and the outlying areas.

69. By the end of 1991, the Myanmar Government's brutal suppression of political opposition had resulted in the detention of at least 64 elected parliamentarians and the death of at least two others in custody. More than 20 other elected representatives had fled the country. In August 1991 the law under which Aung San Suu Kyi, the Nobel Peace Prize winner and former General Secretary of the National League for Democracy, had been held under house arrest, had been revised to increase the period of detention without trial from three to five years. The sentences of certain members of the National League for Democracy Party had likewise been arbitrarily doubled. Hundreds of university students demonstrating peacefully in support of democracy in December 1991 had been arrested and at least 100 sentenced by military tribunals. In SLORC's war against ethnic insurgent groups, there had been widespread abuses of civilians, hundreds of thousands of whom had been uprooted. The army's tactics had included aerial bombardment of civilian areas, systematic destruction of villages, forced relocation programmes and forced porterage. The Burmese army was reported to be abducting men, women and children to carry supplies and serve as human shields against hostile fire.

70. More than 100,000 Burmese were estimated to have been forced out of their country by persecution and civil war. An army campaign in the western State of Arakhan had reportedly led to a flow of at least 40,000 Arakhanese Muslim refugees into Bangladesh, some of whom had given eye-witness accounts of mass arrests, forced porterage, torture, systematic rape and extrajudicial executions. Such acts violated the most fundamental rights recognized by the Universal Declaration of Human Rights and customary international law. In November 1991, the United Nations General Assembly had condemned the regime's human rights record. The International Human Rights Law Group urged the Commission to appoint a special rapporteur under Economic and Social Council resolution 1235 (XLII) to examine the human rights situation in Myanmar and report to the Commission at its forty-ninth session.

71. Since the ending of the Gulf war and the popular uprisings in southern and northern Iraq in March 1991, there had been increased evidence of a pattern of grave and massive violations of human rights committed by the Government of Iraq against its citizens. Such practices were amply described in the excellent report of the Special Rapporteur (E/CN.4/1992/31), which confirmed that the Government of Iraq had taken no steps to ensure that there would be no further violations. Kurds and Shiites, in particular, had suffered extensively. The Iraqi authorities had expelled hundreds of thousands of rural Kurds from their villages, forced them into camps and cities and destroyed more than 3,900 villages. In the late 1980s, the Iraqi Government had attacked Kurdish civilians with poison gas. Thousands had been killed and those who had disappeared remained unaccounted for. The Government had imposed a tight economic blockade on the north, leaving much of the population to face winter in dire need.

72. The Shiites in southern Iraq had been similarly persecuted. In March 1991, the Government had crushed their uprising with large-scale massacres of the civilian population. By the end of March 1991, thousand of Shiites had been arrested and thousands more extrajudicially executed. More than a decade earlier, some 100,000 to 500,000 Shiites had been expelled to Iran and stripped of their possessions, and thousands deemed insufficiently loyal had been subjected to systematic arrest, arbitrary detention and extrajudicial execution.

73. At its forty-seventh session, immediately preceding the March uprising and the Government's violent response, the Commission had urged the Government to put an end to its abusive practices. It was now clear that the appointment of a Special Rapporteur was not enough. A team of human rights monitors should be sent to Iraq as soon as possible to operate there under the terms proposed by the Special Rapporteur until the human rights situation improved dramatically.

74. In Guatemala, in response to international monitoring and pressure, the Government had made more serious attempts over the past year to prosecute the perpetrators of human rights violations, but there was still a situation of gross human rights violations. As reported by Mr. Tomuschat, the independent Expert, Guatemalan society continued to be dominated by fear. Members of the army, police and civil patrols were responsible for many of the crimes committed. Despite some efforts to prosecute violators, full investigation and prosecution was still lacking. A case in point was the murder of José Miguel Merida, a policeman in charge of the investigation into the murder of Myrna Mack, an antropologist. There were reliable reports of death threats and surveillance against those in the Attorney-General's Office dealing with the Mack case and against two journalists carrying out investigations. The Government of Guatemala had failed to protect human rights monitors and had sought to discredit some of them as subversive. Several had been assassinated during the past year. The International Human Rights Law Group welcomed the Expert's recommendation that civil patrols should be abolished immediately, and it urged the Commission to appoint a special rapporteur under agenda item 12 to examine the human rights situation in Guatemala and submit an interim report for transmission to the General Assembly at its forty-seventh session and report to the Commission at its forty-ninth session.

75. Ms. KOUWENBERG (Women's International League for Peace and Freedom) said that her organization had been concerned about the situation in East Timor for many years. She had been there from 15 October to 13 November 1991 and had found the situation extremely distressing. On the eve of the massacre that had taken place there she had spoken to Mr. Kooijmans, the Special Rapporteur on Torture, at the suggestion of an East Timorese person, since the people dared not approach him for fear of reprisals by the Indonesian army. She had given the Special Rapporteur specific examples to illustrate the situation in a country in which people feared daily for their well-being and their lives. Among those examples was the case of a boy of 16 whom she had met with his terrified father, who had told her how the boy and two of his friends had been taken in the middle of the night by the military, who had threatened to cut off their ears. Although they had not done so, the boy had a wound down more than half of his left ear, and his friend had had a similar experience. A priest to whom she had spoken had told her that he regularly met people who had suffered similar experiences. The previous week she had seen an extremely nervous young man who was hiding from the military following the killing by the army of a young Timorese whom he was convinced had been murdered as part of a clean-up operation that was likely to involve hundreds of others in similar circumstances. She and her husband, who had travelled to several places in the country, had been stopped at military checkpoints immediately outside the capital and questioned by police or the military in every town and village they had visited. There had been military convoys everywhere. They had seen armed soldiers in the smallest hamlets, crowded market places and deserted mountain roads. When they had tried to photograph a traditional house, two soldiers had immediately prevented them from doing so and the friendly inhabitants had become terrified. It had been impossible to talk to people apart from those of Indonesian background from Bali, Lombok, Sumatra and Java, who had been eager to talk and accompany them. A 16-year-old girl in Dili had told her that teachers and pupils at her school had been threatened by an Indonesian official that if anyone dared to approach the expected international delegation they would be taken to Taci Tolu, where a mass grave had already been dug for them and where extrajudicial killings had taken place in the past. She had heard that similar threats had been made at meetings in market places and work places around the country. When it had become clear that the long-awaited United Nations/Portuguese delegation was not coming, an elderly woman had told her that the East Timorese people were now terrified because many of them had taken risks in preparing for its arrival, which they had viewed as an opportunity to demonstrate their suffering to the outside world, and as a genuine indication that Portugal and the international community were finally prepared to initiate a process of peaceful negotiation. The woman had told her that Indonesian intelligence had compiled a death list of all those suspected of involvement in "anti-Indonesian activities".

76. In view of the distressing nature of all that she had seen during her visit, she was extremely concerned at the suggestion that the situation in East Timor had returned to normal. The day after the massacre, she had seen wounded people and desperate mothers searching for their children. They had repeatedly begged her to tell the world of their suffering and to urge the United Nations to help them in their desperate situation. They were convinced that their safety could be guaranteed only by a permanent presence of the

United Nations to monitor the situation, and they had stressed that the massacre at the cemetery had not been an isolated incident but was part of a consistent policy of oppression.

77. There appeared to have been no improvement at all in the situation in East Timor. Two Australian women who had just returned from there had said that over 100 people were under arrest in Dili, that anyone they spoke to would be arrested and that more people were being dragged out of their homes and arrested every day. The people of East Timor were in urgent need of assistance.

78. The Indonesian bishops had stated that in order to settle the East Timorese problem, it was imperative to give full attention to those people's feelings.

79. She dedicated her statement to all the women of East Timor.

80. Ms. MARKS (Women's International League for Peace and Freedom) said that her organization was also concerned about the worsening situation of human rights in Guatemala. It urged the Commission to place the question of Guatemala under item 12 of its agenda and to appoint a special rapporteur to investigate abuses and protect human rights there.

81. The League also wished to draw attention to the violations of human rights taking place in the Islamic Republic of Iran, and particularly to the situation of women in that country. Under canon law, the age of puberty for girls was nine years and that had given rise to exploitation and slavery-like practices. It had been reported that people in the poorest sector of Iranian society were encouraged to marry off their daughters when very young in exchange for money. That situation had been reflected in the report of the Special Representative of 13 February 1991.

82. Women in general in Iran were humiliated, scorned and deprived of the most basic human rights. Under Iranian law, women could show no more than their faces and hands and those not complying with that stipulation would face 74 lashes. Many women had been arrested as a result.

83. The most tragic suppression was directed at prisoners of conscience, including many women prisoners, who had been executed by the Iranian regime. Most of those sentenced to death were allegedly humiliated and tortured before execution. In his report, Mr. Galindo Pohl had stated that it had been alleged that a virgin woman condemned to death was subjected to forced matrimony and deflowered prior to execution. The Special Representative had added that the Commission's Special Rapporteur on the question of torture considered rape as a form of torture.

84. Mr. PINTO LEITE (Liberation) said that the Kingdom of Bhutan had been characterized by a consistent pattern of gross violations of human rights for many years. Because of the persistence of an absolute monarchy, the absence of a written constitution or bill of rights and the absence of an independent judiciary, the people had been denied their basic human rights, including the right to political participation in the governance of the country. Political

parties, unions and associations were banned or discouraged and criticism of the King and his family rule could result in the imposition of the death penalty.

85. Following the introduction of the Citizenship Act in 1985 and "Bhutanization" in 1989, repression had increased, particularly in southern Bhutan, because of popular resistance in favour of democracy and human rights. There were reports of mass arrests, arbitrary detention, torture, extrajudicial killings and disappearances, gang rapes and mistreatment of prisoners. The people of Bhutan had thus been forced to leave their country for India or Nepal. More than 45,000 refugees were living in poor and inhuman conditions for lack of adequate relief services.

86. In Indonesia, violations of human rights had been persistent and systematic. In occupied East Timor, the Santa Cruz massacre of 12 November 1991 had been justly condemned, but until that time the massacres practised by the Indonesian regime had gone largely unnoticed. The current Indonesian Government had come to power in 1965 following a frenzy of killings. Between half a million and one million alleged Communists had been killed in one of the worst crimes of the century, yet the Indonesian Government had been spared international criticism and the new regime had been supported by the Western Powers. Indonesia was ruled by one of the world's longest-serving dictators, who had maintained power with the support of an oppressive military security apparatus.

87. In 1983/1984, there had been death-squad killings throughout the major cities of Indonesia which the authorities had justified as a way of combating petty criminals. Although no one in Indonesia dared to say so publicly, everyone knew that they were the work of the security forces, and the President had assumed personal responsibility in his autobiography many years later. The policy of "shoot to kill" was still a common practice. In September 1984, people had been shot in cold blood during a peaceful Muslim demonstration in Jakarta, and in 1984 troops had also opened fire on peaceful demonstrators, pursued wounded survivors, loaded the corpses into trucks and taken them to secret burial places. As in Dili in November 1991, no one had been able to verify the number of deaths.

88. In 1987, a youth demonstration in Ujung Pandang against the wearing of helmets had produced further casualties at the hands of the police, and in 1989, dozens of innocent villagers in South Sumatra accused of plotting against the State had been killed.

89. The latest premeditated mass killings in the ongoing campaign by the army had taken place in Aceh in North Sumatra, where the human rights situation had steadily worsened since 1990. Extrajudicial executions had been taking place there for over two years. Murder squads struck at random, many people had disappeared, thousands had been arrested and tortured, there had been frequent gang rapes and many hundreds of Acehnese had fled to Malaysia. Despite persistent reports by human rights organizations and in the foreign press, the international community had so far failed to act. It was deeply regrettable that the United Nations Special Rapporteur on Torture had been refused permission to visit Aceh during his recent trip to Indonesia.

90. The international community had denounced the Dili massacre because foreign eyewitnesses had been present. For the first time in more than a quarter of a century there had been calls for an international inquiry. The National Inquiry Commission established by the Indonesian Government had no credibility since it lacked independence. The Commission on Human Rights should heed the demands of the many groups in Indonesia that had called for investigation of the massacres and killings. One of the reasons why the Commission had heard so little from the Indonesians concerned had been the Cekal, or blacklisting system, which prevented certain people from leaving or entering the country, in violation of article 13 (2) of the Universal Declaration of Human Rights. The Department of Immigration had maintained, for security reasons, a computerized list of some 17,000 persons. It was virtually impossible for former members and sympathizers of the banned Indonesian Communist Party to obtain passports, so that about 1.4 million people were subject to a blanket travel ban, constant surveillance, compulsory security checks and arbitrary orders. Cekal was now being used as a means for preventing the reading of poetry or the publishing of articles and was becoming synonymous with censorship. The Development Council of the European Community had established a direct link between development and human rights. His organization supported that move and hoped it would be consistently applied without any double standards. The apartheid regime of South Africa was a good example of coordinated isolation efforts by the international community and his organization hoped that similar policies would be applied against the Indonesian Government, with the appointment of a United Nations Special Rapporteur, an arms embargo, the ending of economic assistance and the imposition of appropriate sanctions.

91. It also urged the Commission to appoint a Special Rapporteur to investigate gross violations of human rights in Bhutan.

92. Mr. BALIAN (Human Rights Advocates) recalled that during the past four years, his organization had urged the international community to consider the increasingly violent conflicts of nationalities in the former Soviet Union, but those conflicts, had largely been ignored, thus encouraging further violations of human rights and fundamental freedoms, which had culminated in the attempted coup d'état of August 1991. The conflicts affected a series of rights ranging from the right of minorities to develop their cultural, linguistic and religious identity to the right of nationalities or peoples to self-determination, including the right to autonomy, secession and independence. With more than 100 nationalities over many arbitrarily determined borders, often subjected to mass population transfers, the risk of explosive situations should have been obvious. Since the break-up of the Soviet Union and the attainment of self-determination by some of the peoples in the republics, the international community had a new opportunity to intervene and help to solve the intensifying nationalities conflicts. The independence of the former Soviet republics had solved the conflicts between the centre and the republics, but conflicts among the republics and with disenfranchised minorities within some of them had not yet been settled, and more were inevitable. According to Mr. Shevarnadze, the former Foreign Minister, 175 nationalities-related disputes, of which 20 had escalated

into armed conflicts, had occurred in the Commonwealth of Independent States during the past four years, the most important of which were those in Nagorno-Karabakh, and South Ossetia and the dispute between the Russian Federation and Ukraine.

93. The Nagorno-Karabakh conflict illustrated his organization's concern. The province had been an autonomous province within Azerbaijan with a population of 188,000, of whom 80 per cent were Armenians. Its administrative status had encouraged the anti-Armenian pogroms in Azerbaijan. By a decision of the Communist Party leadership, Nagorno-Karabakh had been given to Azerbaijan in 1921, and that State had since pursued a policy of economic and social discrimination and political repression against the Armenians of Nagorno-Karabakh in an effort to force them out of the territory. Since the annexation, economic underdevelopment, social inequality, political repression and ethnic and religious discrimination against the Armenians had kept alive the population's goal of reunification with Armenia. Armenians had repeatedly petitioned the Azerbaijan and central Soviet authorities to redress their grievances. In 1988, when those petitions had again been ignored, they had taken to the streets in peaceful demonstrations, to which Azerbaijan had responded with anti-Armenian pogroms in February and October 1988, January 1990 and the spring of 1991. In December 1989, Armenians had unilaterally declared their enclave united with Armenia. Since then a state of virtual war had existed between Armenians and Azerbaijanis in and around Nagorno-Karabakh. The violence had resulted in well over 2,000 deaths and a mass transfer of populations between Azerbaijan and Armenia, producing more than half a million refugees. Threatened with further deportations and pogroms, the remaining Armenians in Nagorno-Karabakh had eventually resorted to armed self-defence in exercise of their inalienable right.

94. During the past six months, a number of delegations of non-governmental organizations had visited the region and concluded that grave violations of human rights, including the taking of hostages, disappearances, summary executions, torture and arbitrary detentions, had been committed by Azerbaijani troops. In addition, there had been forced deportations of the Armenian population of entire villages and there was evidence that additional deportations were planned.

95. Following the attempted coup d'état in August 1991, President Mutalibov of Azerbaijan had declared his support for the coup leaders. Shortly after the failure of the coup, Azerbaijan had proclaimed its independence, followed by the proclamation of the Nagorno-Karabakh Republic. A mediation effort by President Yeltsin of the Russian Federation and President Nazarbayev of Kazakhstan had been thwarted by Azerbaijan's intransigence.
On 26 November 1991 Azerbaijan had annulled the autonomous status of Nagorno-Karabakh and launched a massive military operation against the Armenian-inhabited villages and towns. CIS appeals to Azerbaijan to end the military operations and return to negotiations had been ignored.

96. During the past two and a half months, Stepanakert, the capital of Nagorno-Karabakh, had survived without essential food or humanitarian supplies, with little water and without electricity or heat, communications with the outside world or mass media, and with a daily deluge of rockets and

artillery shells. The poorly equipped Armenian self-defence volunteers had resisted and had sometimes regained lost villages. Nagorno-Karabakh had repeatedly appealed to the CIS, the European Community, the CSCE and the United Nations to send fact-finding missions and international peace-keeping forces with a view to ending the bloodshed and preventing an all-out Azerbaijani onslaught. The situation had recently worsened dramatically with Azerbaijan's use of weapons of mass destruction against civilian targets in Nagorno-Karabakh. Stepanakert had come under continuous bombardment for 24 hours by more than 300 missiles, which had been used to destroy the city systematically block by block. The number of casualties was impossible to determine, many still being trapped in the basement shelters of their collapsed blocks. The situation in Nagorno-Karabakh required urgent action if massacres were to be avoided.

97. He appealed to the Commission and other competent bodies to call urgently upon all parties concerned to ensure respect for human rights and to take necessary measures to settle conflicts without the use of force and economic blockade, relying instead on dialogue, negotiation and mediation in cooperation with the United Nations and other institutions such as the CSCE; to appeal to the relevant authorities fully to respect the linguistic, cultural and religious rights of minorities within their territories; to urge all parties to respect all the laws of armed conflict and particularly to end the use of weapons of mass destruction against civilian targets and to end the forced transfer of populations; to request the Centre for Human Rights to make advisory services available to all relevant authorities with a view to improving human rights conditions; to invite special rapporteurs and working groups to consider the relationship between conflicts within the trans-Caucasus republics and the violations within their respective mandates; to invite ICRC to study the humanitarian situation resulting from the conflict in Nagorno-Karabakh; to suggest to relevant organs of the United Nations that UNHCR should be invited to consider urgently any appropriate action to protect and assist the many thousands of refugees and displaced persons in the trans-Caucasus republics; and to suggest that the relevant organs of the United Nations should consider the deployment of United Nations peace-keeping forces in Nagorno-Karabakh in order to ensure the peace and security and human rights and fundamental freedoms of all the inhabitants of the region.

98. Mr. EGUIGUREN (Andean Commission of Jurists) said that the existence in all Andean nations of constitutional governments chosen through democratic elections was extremely important, but was not sufficient to ensure the adequate functioning of the institutions and peaceful coexistence of the inhabitants. In some countries of the region life itself continued to be under repeated attack. It was unfortunate that political violence and the persistent practice of summary or arbitrary executions continued to take the lives of thousands of people annually in Colombia and Peru, where armed subversion and other forms of violence had helped to create a situation in which institutional structures had deteriorated and assassination and other acts of terror were used to weaken them. In some cases, there was also violence generated by drug traffickers. Unfortunately, government responses had often been outside the norms and principles of the state of law that should always inspire action to restore public order, and had allowed

paramilitary groups to act with impunity. In Colombia, 2,895 people had been killed for political reasons in the first nine months of 1991. That was an even higher number than in 1990. It included victims of selective assassination as well as those killed in clashes between subversives and security forces. The large number of civilian victims of such confrontations (405 dead and 705 injured between January 1988 and September 1991) and the small number of casualties reported among subversives showed that civilians continued to be the main group affected and that the basic standards of international humanitarian law were not being complied with. Various Colombian human rights groups had also drawn attention to the fact that civilian populations were targeted in counter-insurgency operations on the pretext that they maintained ties with subversive groups, the victims being presented as guerrillas killed in combat. Massacres and selective assassinations had similarly been covered up.

99. A further phenomenon that had recently appeared in Colombia was that of assassinations by "social clean-up" groups, whose victims were petty thieves, drug addicts, prostitutes, homosexuals and beggars. In 1990, 267 murders of that nature had been reported but that number was probably extremely conservative since the Criminal Investigation Office in the Department of Caldas had registered 326 murders of "undesirables" in the first quarter in the city of Manizales alone.

100. The fact that violence at the hands of drug traffickers in Colombia had declined should be welcomed and the central Government should be commended on the steps it had taken. The lighter sentences imposed on those who gave themselves up and confessed their crimes had been among the important factors.

101. In Peru, violence unleashed by subversive groups, and notably the Shining Path, had taken a heavy economic and human toll. But permanent and bloody provocation which betrayed the most elementary norms of humanity could neither legitimize nor justify human rights violations and disregard for the rule of law by the Government's own counter-insurgency forces. Gestures in the direction of greater transparency with regard to summary and arbitrary executions by military or paramilitary forces were by no means enough to unravel the complex network of violence. A clear distinction must be made between the legitimate use of repression by the democratic State and repression which lay outside legal norms and violated fundamental rights, relying on the impunity that went hand in hand with weakness and inefficiency in the judicial system.

102. Against the background of political violence and internal armed conflict so detrimental to human rights in some Andean countries, there was an urgent need to reorient people's conduct towards at least a minimum of respect for humanity. But that alone would not be enough; only if the conflicts themselves were resolved would the factors that contributed to the violation of human rights diminish. Pacification was the best response to the situation in Colombia and Peru.

103. Mr. AL-JADIR (Arab Organization for Human Rights) said that, as was clearly demonstrated in the report of the Special Rapporteur and in the annual report of the Arab Organization for Human Rights, the totalitarian Iraqi regime was pursuing its flagrant and dangerous violation of human

rights and fundamental freedoms, and continuing to inflict suffering on the population. But the economic blockade imposed by the Security Council was also harming the people of Iraq, and must be lifted to permit relief work throughout the country.

104. The Horn of Africa, too, was beset with difficulties. Disturbances in Djibouti had led to the imposition of a state of emergency in September 1991, and there had been countless well-documented violations of the right to life committed by Government forces against the unarmed civilian population, which was bearing the brunt of inter-ethnic conflict and the struggle for power.

105. The fall of the earlier regime in Somalia in January 1991 had brought little improvement in the human rights situation; the country was in a state of chaos as a result of political and, more frequently, tribal disputes.

106. In northern Sudan, which had proclaimed secession in the spring of 1991, power was uneasily shared; famine and the lack of medicines, and the ensuing internal and external displacement of populations, had caused great suffering, especially among children. International and regional attempts at reconciliation and humanitarian intervention in the Sudan, in which the League of Arab States participated, had failed to put an end to the crisis; and the United Nations had been somewhat tardy in its response. The Arab Organization for Human Rights called upon all organizations, including the Organization of African Unity, to pool their efforts in seeking with all due urgency a just solution to the enormous and complex problems of that part of the world. Respect for the provisions of the International Covenant on Civil and Political Rights and the establishment of genuine multi-party democracy were essential prerequisites in that connection; attempts to provide famine relief must not be obstructed by the Sudanese authorities.

107. Lastly, he referred to the recent upsurge of Israeli terrorism in southern Lebanon, which had resulted in much suffering and loss of life, especially among women and children. The situation there called for urgent intervention by the Commission.

108. The CHAIRMAN invited any delegations wishing to do so to exercise their right of reply.

109. Mr. CHOWDHARY (India) took issue with the groundless charges levelled at his country by the representative of Pakistan. Selective and tendentious references to the State of Jammu and Kashmir, which was an integral part of India, constituted open interference in the country's internal affairs. The people of that State, like their compatriots in other parts of India, had long enjoyed periodic free and fair elections and returned freely elected governments to office. The laws provided ample safeguards against violations of human rights, even in exceptional circumstances such as those for which Pakistan was responsible.

110. Pakistan, which had emerged as the single most important base for terrorism and narco-terrorism in the subcontinent, had consciously and declaredly backed armed interference and criminal actions in Jammu and Kashmir, with the aim of thwarting the rights and subverting the freedoms of

its people. Militant activity there had been given fresh momentum by the participation of Pakistani nationals. India's neighbour had officially become a sponsor of terrorism and the springboard for subversion against its territorial integrity.

111. Against that background, the recent call for mass crossings of the Line of Control could only be described as a highly provocative and unprecedented action encouraged by the Government of Pakistan, whose Prime Minister had himself gone so far as to appeal for so-called "solidarity" with the people of Kashmir, who were spuriously claimed to be struggling for self-determination.

112. Contrary to what had been alleged by the representative of Pakistan, the Indian police and security forces were making strenuous attempts to protect the lives of innocent men, women and children in Jammu and Kashmir. Moreover, constitutional guarantees and laws ensured speedy investigation and redress in the case of mistakes. Most complaints were in fact false, concocted as a means of defaming the security forces and turning the local people against them. On the other hand, there were eye witnesses to the havoc wrought by the Pakistan-inspired terrorists.

113. He called upon the delegation of Pakistan to refrain from interventionist diatribes against India and to join in working towards amity and cooperation. The Simla Agreement, to which both Pakistan and India were committed, provided the framework for peaceful resolution of all bilateral issues.

114. Mr. ANSARI (Pakistan), exercising the right of reply, said that the previous speaker's statement had been based on a gross distortion of the facts, and was totally devoid of logic. The failure by the representative of India to express remorse over the plight of the Kashmiri people was disappointing, and the claim that Jammu and Kashmir was an integral part of India was fallacious.

115. The issue of Kashmir had been before the Security Council since 1947, and Security Council resolutions provided that the future of the disputed territory was to be decided on the basis of a free and impartial plebiscite sponsored by the United Nations. It was, moreover, a great pity that India remained blind to the writing on the wall regarding the just and democratic struggle of the Kashmiri people, who had taken to the streets in thousands to demand self-determination.

116. Attempts to blame Pakistan for the state of affairs in Kashmir conveniently and deliberately ignored well-documented reports by Indian human rights organizations, as well as the international media, the veracity of which had been demonstrated on many occasions. Unable to offer any plausible arguments in support of its own untenable stand, India had endeavoured to mask its brutalities in Kashmir by making baseless references to the internal affairs of Pakistan, conveniently forgetting the sad plight of its own minorities in Punjab, Assam and other parts of the country.

117. As impartial observers had acknowledged, the people of Kashmir had embarked on their struggle of their own free will. If there was any element of truth in India's frequent allegation that Pakistan was involved, why did it

not at once accept the proposal that the Commission on Human Rights send an intergovernmental team of neutral observers to Kashmir on a fact-finding mission?

118. Mr. PIRIZ BALLON (Uruguay), speaking in exercise of the right of reply regarding the remarks made that morning by the representative of the Latin America Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM), rejected the declaration by the Inter-American Commission on Human Rights that the Uruguayan law on the expiry of the statute of limitations, approved by a popular referendum, was in breach of the American Convention on Human Rights and of the American Declaration of the Rights and Duties of Man. The Inter-American Commission's decisions did not have binding force, and its members were not infallible. Consequently, when that opinion had been delivered, his country's representative, speaking on behalf of the Government and with the approval of Parliament, the political parties and the organs of public opinion, had described the declaration as a slap in the face, and a denial of the sovereignty of the Uruguayan people, who, in a free referendum, had supported that law as the basis for national reconciliation. The law in question was fully compatible both with Uruguayan domestic law and with the country's international obligations. It also contributed to safeguarding human rights, since any attitude affecting democratic stability might compromise future respect for those rights. Uruguay had never denied the criminal nature of the violations of human rights that had taken place under the de facto regime. Furthermore, that law did not affect redress to victims of the dictatorship.

119. In short, the declaration made by the representative of Uruguay a few days previously to the effect that the international human rights conventions ratified by Uruguay constituted domestic law directly applicable by the courts, was not invalidated by an erroneous interpretation on the part of the Inter-American Commission of the legal scope and constitutional legitimacy of the law on the expiry of the statute of limitations.

120. Mr. AL-DOURI (Iraq), exercising the right of reply, referred to the remarks by the observer for Kuwait concerning the so-called question of Kuwaiti detainees in Iraq. He said that Iraq had fulfilled its obligations under paragraphs 30 and 31 of Security Council resolution 667 (1990) concerning the return of foreign citizens. It had from the outset collaborated fully with ICRC, facilitating access by its representatives to places of detention and organizing the repatriation of Kuwaiti nationals, some 3,000 of whom had, however, seen their return refused by the Kuwaiti authorities or had freely elected to remain for the time being, in Iraq, where no constraints were imposed on their movements.

121. Moreover, contrary to what was alleged by the representative of Kuwait, the Iraqi authorities had endorsed the conclusions of the meeting held with representatives of the coalition of States on 16-17 October 1991. The names of missing Kuwaiti and Saudi citizens would be published in Iraq and steps would be taken to determine their fate. Lists of places of detention and arrest were to be communicated to ICRC so that its representatives might visit

them in their search for missing persons. The Iraqi Ministry of Foreign Affairs had, on the basis of reciprocity, requested that similar steps be taken in Saudi Arabia and Kuwait, but its request had - for reasons best known to those countries - been refused.

122. On 17 December 1991, the Ministry had transmitted a memorandum to ICRC in Baghdad requesting the preparation of a comprehensive plan, to be agreed between Iraq and the coalition States for the continuation of the quest for all missing persons, in accordance with the provisions of the 1949 Geneva Convention.

123. Kuwait's refusal to accede to Iraq's request for reciprocity signified that it deemed there to be, in the matter of human rights, first-class (i.e. Kuwaiti) and second-class (i.e. Iraqi) citizens. Surely such discrimination could not but distress the Commission, while Kuwait's own good faith might also be called in question by such well-documented propaganda incidents as that where an anonymous child, who had claimed before the United States Congress to have witnessed Iraqi atrocities, had been identified as the daughter of the Kuwaiti Ambassador in Washington.

124. Mr. AL-OTHMAN (Observer for Kuwait) said that his country had already had occasion, in the context of the Security Council, to refute all Iraq's contentions on the subject of detainees. On the issue of reciprocal treatment under the 1949 Geneva Convention, he submitted that that instrument contained no relevant provisions, adding that Kuwait and the coalition States had, nevertheless, fully complied with the Convention, just as they had fully collaborated with ICRC and its representatives.

125. If, as the representative of Iraq had stated, a number of former residents of Kuwait had indeed remained in Iraq of their own free will, that was no doubt because some of them were stateless persons, whilst others were of Iraqi origin. ICRC, incidentally, was in the possession of the names and addresses of persons of Iraqi origin whom the Kuwaiti authorities had, for humanitarian reasons, permitted to remain in the country.

126. Mr. CHOWDHARY (India), again exercising the right of reply in response to the remarks by the representative of Pakistan, affirmed that whatever the provocation, human rights, fundamental freedoms and the rule of law applied as much to Jammu and Kashmir as to any other part of India; the same, alas, could not be said of those parts of Kashmir still suffering from Pakistani occupation or indeed of Pakistan itself.

127. Where true human rights and self-determination were concerned, there was no place for terrorism or the denial of the rights of others. He urged Pakistan to desist from providing aid to those responsible for outrage, and to join with India in building good-neighbourly relations within the framework of the Simla Agreement, which was so vital for peace in the region and for the prosperity of both their peoples.

128. Mr. ANSARI (Pakistan) again expressed disappointment at India's patently wrong-headed stand, which amounted to hurling defiance at the United Nations and negating the resolutions of the Security Council.

129. He again rejected as baseless and unfounded India's insistence that Pakistan was involved in the just struggle of the Kashmiri people for self-determination. Furthermore, the contention that the Simla Agreement had altered the status of Jammu and Kashmir as a disputed territory, and that Pakistan was precluded from taking up the issue at the United Nations, had no legal justification whatsoever. The Agreement in fact specifically provided that relations between the two countries should be governed by the Charter of the United Nations, made a distinction between the Line of Control and an international border and explicitly protected the position of either side, indicating that final settlement was still on the agenda. Lastly, he pointed out that Articles 34 and 35 of the Charter specifically empowered the Security Council to investigate any dispute independently or at the request of Member States. Those provisions could not be made subservient to any bilateral agreement.

The meeting rose at 9.20 p.m.